

House Judiciary, Rules & Administration Committee

Minutes
2008



MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 9, 2008

TIME: 1:45 PM

PLACE: Room 404

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None

MINUTES: Chairman Clark called the meeting to order and introduced the page, James Cooper. The Chairman welcomed the members back and acknowledged Representative Steve Kren as the newest member of the Committee. The Chairman then asked the members to select their seats according to seniority. The Chairman said it looked like it would be a busy session for the Committee. Meetings would be held the following week on Tuesday and Thursday.

SUB-COMMITTEE: Chairman Clark said there will be a Subcommittee assigned to review and make recommendations on the Administrative Rules sent to the Committee. That Subcommittee will be chaired by Vice Chairman Leon Smith with the following members: Representatives Wills, Luker, Bock and Ruchti.

Representative Smith said the first meeting to review a portion of the Pending Rules would be held immediately after the full Committee meeting on Tuesday, January 15.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 2:10 PM.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 15, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None.

GUESTS: Please see attached sign-in sheet

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Harwood made a motion to approve the minutes of the meeting held on January 9, 2008, as written. Motion carried by voice vote.

RS 17335: The first item on the agenda was **RS 17335**. Chairman Clark recognized **Dawn Peck**, manager of the Idaho State Police Bureau of Criminal Identification, to explain the proposed legislation.

Ms. Peck said this bill clarifies the authority of the Idaho State Police to retain the full normal federal background check fee when the positive identification is made at the state level and the state does all the processing without submitting fingerprints to the FBI for processing. The FBI authorizes states to retain the FBI's fee, if a positive identification is made at the state level and the criminal history is obtained via the Interstate Identification Index system.

Ms. Peck said the department deposits all fees collected for background checks into a dedicated account that is utilized to fund many of the Bureau's staff, much of its operating costs and all technology refreshments. This includes repository staff, sex offender registry staff and others. If this legislation had been in place during fiscal year 2007, the department would have collected an additional \$99,336.

MOTION: **Representative Smith moved to introduce RS 17335.** Motion carried by voice vote.

RS 17457: Chairman Clark recognized **Representative Bock** to explain the proposed legislation. **Representative Bock** said this legislation was drafted at the request of attorney John 1McGown. Idaho encourages its citizens to volunteer by reducing their exposure to liability for service to nonprofit organizations when done without compensation.

This legislation makes two clarifications. First, it recognizes that nonprofit organizations may be created in the form of a trust. Second, current law requires that the nonprofit organization "regularly bestow benefits to the

community at large.” This requirement is very subjective. This proposed amendment would add an objective standard which will allow the requirement to be met if the organization “is tax exempt under section 501(c)(3) of the Internal Revenue Code.” This legislation would add more definition to the current statute.

MOTION: **Representative Wills moved to introduce RS 17457.** Motion carried by voice vote.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 1:45 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE SMITH SUBCOMMITTEE

DATE: January 15, 2008

TIME: 1:50 P.M.

PLACE: Room 240

MEMBERS: Chairman Smith(24), Representatives Wills, Luker, Bock, Ruchti

**ABSENT/
EXCUSED:** None.

GUESTS: Dir. Callicutt and Nancy Bishop, Dept. Of Juvenile Corrections; Lt. Reese, ISP; Jeff Black, POST Academy

**RULES REVIEW,
DEPT. OF
JUVENILE
CORRECTIONS:** Chairman Smith called the meeting to order and recognized **Director Callicutt** to explain the pending rules of the Department of Juvenile Corrections. The Director asked if **Nancy Bishop** could help explain the rules.

**DOCKET # 05-
0101-0701:** **Ms. Bishop** said these are the rules for the Contract Providers. The changes that were made were as follows:

Sections were added to the rules to comply with the federal Prison Rape Elimination Act.

Sections were added to identify more specifically federal and state legal requirements for educational services that must be provided to juvenile offenders in the department's custody.

Sections were added regarding requirements and descriptions of residential programs by the persons who want to contract to provide specialized services to the state. For example, a person or entity seeking to contract for specialized gang programs must describe with specificity that program and demonstrate its basis for successfully dealing with juveniles who have been involved in gangs.

The remaining changes were largely housekeeping matters and clarification in certain areas, such as community pass rules.

Representative Wills questioned why the word "certificate" on page 80 was changed to "credential." **Representative Wills** asked **Ms. Bishop** to obtain an answer and report back to him.

MOTION: **Representative Wills moved to recommend to the full Committee that Docket #05-0101-0701, Rules for Contract Providers, be approved as adopted. Motion carried by voice vote.**

**DOCKET #05-
0102-0701:** The Chairman recognized **Ms. Bishop** to explain. This docket deals with the Rules and Standards for Secure Detention Centers. Changes were made to correct rule language to match the statute. While this chapter

was revised and approved during the 2007 session of the Legislature, there are two corrections that should be made. It should be stated that a certificate is issued to juvenile detention centers instead of a license and the word "offender" should be inserted after the word "juvenile."

MOTION: **Representative Luker moved to recommend to the full Committee that Docket #05-0102-0701, Rules for Secure Detention Centers, be approved as adopted. Motion carried by voice vote.**

DOCKET # 05-0103-0701: Chairman Smith recognized **Nancy Bishop** to explain the final docket of the Idaho Department of Juvenile Corrections relating to the Rules of the Custody Review Board. In these rules, all references to "opinion" of the Custody Review Board were changed to reflect that the board decisions are more accurately described as "determinations."

One rule (103.03), page 117, is amended to clarify that the Board cannot set dates for release (i.e., cannot create a determinate sentence.)

Rules have been amended to allow the Director to appoint alternates and their term of appointment is set for two years.

The rules have been amended to clarify when and how the Board members may reconsider a determination.

Representative Ruchti and Representative Luker expressed concerns that there is no standard by which an alternate is appointed to serve on the Board.

MOTION: **Representative Bock moved to recommend to the full Committee that IDAPA 05.001.01, Docket #05-0103-0701, Rules of the Custody Review Board, be approved as adopted with the exception of Section 102, subsections 01.a and 01.c. It is recommended that the full Committee reject those two subsections. Motion carried by voice vote.**

RULES REVIEW, IDAHO STATE POLICE: Chairman Smith recognized **Lt. Reese** with the Idaho State Police to explain the pending rules.

DOCKET #11-0701-0701: The General Provision section of this rule references outdated Idaho codes and outdated federal standards. The outdated references are being deleted and current codes, standards and/or specifications are being incorporated by reference. Under Definitions (Rule 6), definitions were added for Motor Vehicle and Highway. Rule 7 is a citation rule. Rule 40 incorporates federal regulations which have been adopted.

MOTION: **Representative Luker moved to recommend to the full Committee that Docket #11-0701-0701 be approved as adopted. Motion carried by voice vote.**

DOCKET #11-1101-0701: Chairman Smith recognized **Jeff Black**, executive director of the Idaho State Police/Peace Officer Standards and Training Council, to explain.

These rules clarify to whom the rules apply. They update and add definitions and clarify existing rules. Minimum vision standards are updated. How long a medical e3xam is valid is established. They allow vo-tech program coordinators to be eligible for certification and allow POST certified peace officers to maintain their certifications while employed as tribal officers with federally recognized Indian tribes within Idaho.

MOTION: **Representative Wills moved to recommend to the full Committee that Docket #11-1101-0701 be approved as adopted. Motion carried by voice vote.**

DOCKET #11-1104-0701: Chairman Smith recognized **Jeff Black** to explain. This pending rule clarifies what documentation is acceptable as proof of citizenship. Education and experience standards are reworded to make them easier to understand. Language is added allowing minor hearing deficiencies to be waived by the POST Executive Director rather than the POST Hearing Board. Vision standards are updated and outdated subsection numbers are corrected. Finally, firearm qualification requirements are added for Probation and Parole officers.

MOTION: **Representative Ruchti moved to recommend to the full Committee that Docket #11-1104-0701 be approved as adopted. Motion carried by voice vote.**

ADJOURN: Prior to adjourning, Chairman Smith said the final rules received by the Committee on Shorthand Reporters, the Division of Veterans Services and the Proclamation by the Department of Correction would be reviewed by the Subcommittee on Monday, January 21, immediately following the full Committee meeting.

There being no further business to come before the Subcommittee, the meeting was adjourned at 3:00 P.M.

Representative Leon Smith
Subcommittee Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 17, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None.

GUESTS: Please see attached sign-in sheet

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Vice Chairman Smith made a motion to approve the minutes of the meeting held on January 15, as written. Motion carried by voice vote.

**PRESENTATION
ON IDAHO DEPT
OF JUVENILE
CORRECTIONS:** Chairman Clark recognized **Director Larry Callicutt** to bring the Committee up-to-date on the Department.

The Director said there are four meaningful and measurable objectives before the Department. One objective is that victims of crime will receive justice. Another is that families will be involved and participate in the process while juveniles are in the Department's custody. The third objective is to prepare juvenile offenders for successful return to their community while they are in state custody and the last objective is to increase the level of professionalism of the IDJC workforce.

A handout from the Director shows juvenile population trends and IDJC recidivism rates. The handout also gives a legislative update for the Department and shows the number of Idaho juvenile beds (attachment.)

In answer to a question from the Chairman, the Director said the current percentage of female offenders in custody is about 14%.

RS 17495: The Chairman thanked the Director and said the first item on the agenda was **RS 17495. Michael Henderson**, legal counsel for the Supreme Court was recognized to explain the proposed legislation.

This legislation would repeal the existing Idaho Code Section 31-3201A and enact a new statute in its place that would more accurately reflect the filing fees in civil cases.

Currently, several fees are set forth in other sections of the Idaho Code that are not reflected in Idaho Code Section 31-3201A. This new statute would incorporate those fees to reflect the exact total fee that is to be charged for each filing in a civil case, eliminating much of the confusion now encountered by court clerks, attorneys and litigants.

In addition, the bill eliminates several of the distinctions between filing fees for different types of civil cases. The bill adds the \$10 ISTARs fee and the \$6 Senior Magistrate Judges Fund fee to the filing fee for small claims cases. Further, the bill clarifies that where several defendants make their initial appearance in a civil case in the same filing, only one initial appearance fee is paid for the filing, rather than one fee for each defendant.

Mr. Henderson said the idea is to simplify and streamline the old statute dealing with filing fees.

MOTION: **Vice Chairman Smith moved to introduce RS 17495. Motion carried by voice vote.**

RS 17575: Vice Chairman Smith took the Chairman's seat in order that **Representative Clark** could explain the proposed legislation.

Representative Clark thanked **Representatives Labrador, Bolz, Luker, Bock and Ruchti** for their work on this proposed legislation. This mini task force put in many hours over the spring, summer and fall studying several issues and this legislation represents one of those issues.

Representative Clark directed the Committee's attention to the Statement of Purpose, saying this bill provides a system for stabilizing the Judges' Retirement Fund. The retirement fund, established in 1947, has assisted in the recruitment and retention of appeals and district judges. It is funded by a combination of civil filing fees, employee and employer contributions and a return on the investment of funds.

This bill creates a Judges' Retirement Stabilization Fund similar to the existing Budget Stabilization Fund. It would be supported by the transfer of a portion of existing filing fees, court costs, fines and forfeitures imposed under existing statutes. If the assets of the Judges' Retirement Fund (JRF) were less than the JRF's actual accrued liabilities in a given year, the treasurer would transfer an amount from the Judges' Retirement Stabilization Fund to the JRF.

There would also be a limit on the amount of funds that could be accumulated in the Judges' Retirement Stabilization Fund. If the amount in this fund, plus the assets of the JRF, exceeded the liabilities of the JRF by more than 10% , the excess would be transferred to the general fund. Also, if the amount in the Judges' Retirement Fund should exceed the projected employers' contribution to the JRF for the coming fiscal year, no general fund moneys would be appropriated for the employers' contribution for that year.

MOTION: **Representative Bock moved to introduce RS 17575. Motion carried by voice vote.**

RS 17609: Chairman Clark recognized **Patti Tobias**, Administrative Director of the Courts, to explain the proposed legislation.

This bill, developed in coordination with the Idaho State Police (ISP) would give ISP the responsibility for providing security and protection for

Supreme Court Justices and judges of the Court of Appeals, as well as responsibility for law enforcement at the Supreme Court Building.

Current statutes state that ISP provides security and protection for the Governor and for the Legislature when it is in session, and that ISP is responsible for law enforcement at the Statehouse. This bill would mirror those provisions and extend these responsibilities to the Supreme Court and to Idaho's appellate justices and judges.

MOTION: **Representative LeFavour moved to introduce RS 17609. Motion carried by voice vote.**

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 2:35 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 21, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representative Harwood

GUESTS: See attached sign-in list

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative McGeachin moved to approve the minutes of the meeting held on January 17, as written. Motion carried.

**PRESENTATION
BY IDOC:** The Chairman recognized **Director Brent Reinke** to give an update on the Idaho Department of Correction. The Director gave each member a copy of the Department's Annual Statistical Report for Fiscal Year 2007 and asked to yield to **Greg Sali** to explain some of the information contained in the report.

Mr. Sali said the purpose of the report is to describe current and historic statistical information regarding offenders incarcerated or supervised by the Department. Mr. Sali referenced a chart illustrating the process by which offenders come to the department, how they flow through the system and how they are eventually discharged (attachment.)

Mr. Sali then directed the members' attention to Table 8 (attached) which shows the magnitude of growth in court commitments to the Department for registerable sex offenses for the period 1996 through 2007 and the anticipated growth through 2012. From 1996 through 2007, the average portion of all court commitments that were for registerable sex offenses was about 6%. This percentage has been reasonably stable, varying from a high of 7.4% in 2003 to a low of 5.1% in both 2006 and 2007. Court commitments for sex offenses have grown at the same rate as total court commitments.

The Board of Correction established a definition for a recidivist which is an offender who, after having been previously discharged from a period of incarceration or supervision by the Department, is committed by the courts to a new period of incarceration by the Department, or an offender who revokes probation or parole while under the supervision of the Idaho Department of Correction.

Mr. Sali referenced Chart 47 on page 39 (attached). The chart shows the distribution of time to revoke for Idaho Probationers during the period FY 1996 through 2007. By the end of 12 months, almost half of those who

will recidivate have done so. For probationers, 82% of those who recidivate do so within 30 months. The number of recidivists after that point tapers off very quickly and only 12% recidivate after 3 years.

Director Reinke gave each member a pamphlet showing the Department Update (attached.) The Director said the black hats worn by many represent a campaign of one agency, one mission and one message and how that campaign is marketed. The Department holds people accountable. The staff turnover has been reduced. There are 242 fewer inmates.

In answer to a question concerning transition homes, the Director said they seem to be making a difference, but it is too early to quantify that. The Director went on to say 120 inmates will be transferred outside the state.

One of the changes made is a virtual prison program. It has become apparent that 2,638 contract beds are needed. The Department would like to have a secure mental facility. Three facilities of this type were visited in other states. The Department has a good plan in place for later consideration. A location for the secure mental facility is still being researched.

The last page of the pamphlet deals with a five year vision plan.

The Director directed the members attention to a blue handout (attached) regarding the IdahoVINE program. IdahoVINE stands for Victim Information and Notification Everyday. The program is a free, automated hotline that provides crime victims with vital information and notification 24 hours a day, 365 days a year. This service will allow citizens to obtain offender information and to register for notification of a change in offender status, such as offender release.

The next document (attached) shows a list of members on the Idaho Criminal Justice Commission. The Commission is leading the effort to bring Idaho in compliance with the Adam Walsh Act and strengthen Idaho's sex offender laws. The Commission's goal is to implement the unfunded mandate in a way which enhances public protection without being too expensive or making Idaho laws so restrictive that a judge can reject them.

The Director closed his remarks by saying on Friday, February 15, there would be an Idaho Criminal Justice Commission meeting from 9:30 a.m. to 1:30 p.m. at 565 W. Myrtle St., Main Floor Conference Room (IHFA Building/east of the Flicks Theater). All members are cordially invited to attend.

RS 17595:

Vice Chairman Smith took over the Chairman's seat in order that Representative Clark could present the proposed legislation. Representative Clark said the purpose of this legislation is to increase public safety by providing for the electronic monitoring of violent sexual predators who are placed on probation or parole. There is no fiscal note because this type of electronic monitoring is all ready taking place.

MOTION:

Representative Shirley moved to introduce RS 17595. Motion carried

by voice vote.

RS 17598: Representative Clark said this proposed legislation will amend Idaho Code, Section 18-8329, to clarify restrictions on adult criminal sex offenders' access to children in school buildings, on school grounds and properties used by a school for extracurricular activities or events. Exceptions are also provided for persons exercising their right to vote and those taking delivery of their mail through an official post office located on school grounds.

MOTION: **Representative LeFavour moved to introduce RS 17596. Motion carried by voice vote.**

RS 17609: Representative Clark said this proposed legislation adds Idaho Code Section 18-8330 for the purpose of penalizing and deterring people from assisting individuals required to register as sex offenders from avoiding the registration requirements.

Several committee members expressed concern over the language and the fact that this legislation might cause individuals to become felons who have a reason to believe that a violent sexual predator is not complying with the requirements of this chapter and simply remain quiet. Representative Clark asked that the legislation be introduced in order that testimony could be taken and the language amended.

MOTION: **Representative Nielsen moved to introduce RS 17609. Motion carried by voice vote.** Representatives Hart and Smith asked to be recorded as voting "No" on the motion

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 2:50 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE SMITH SUBCOMMITTEE

DATE: January 21, 2008

TIME: 3:00 P.M.

PLACE: Room 240

MEMBERS: Chairman Smith(24), Representatives Wills, Luker, Bock, Ruchti

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: Lorenzo Washington, Policy Program Coordinator, Department of Correction; Dennis Stevenson, Rules Coordinator, Office of Administrative Rules; Dan Copeland, Department of Correction; Tana Cory, Idaho Shorthand Reporters; David Brasuell, Adm., Division of Veterans Services

RULES REVIEW: **Notice of Proclamation of the Idaho Board of Correction.**

DOCKET 06-0101-0701: Chairman Smith recognized **Lorenzo Washington** to explain the Proclamation on the Rules of the Board of Correction.

Lorenzo Washington provided opening comments and asked to yield to **Dennis Stevenson**, Rules Coordinator, to give a brief history of the rulemaking process for the Idaho Board of Correction. Mr. Stevenson stated that the Board's rules are not subject to the public hearing process. The Board's rules become final and go into effect 30 days after publishing in the Administrative Bulletin.

This rulemaking is necessary to reflect current Idaho Department of Correction practices, standards, policies, procedures and directives. The Board of Correction rules have not been amended since 2002. Changes consist of amendments to or about 19 different major sections and/or subsections. Many of the changes are minor and are necessary to clarify processes or requirements or to reference a section to other sections that are closely associated.

Mr. Washington said revisions were needed to accurately reflect how the Department currently manages its offender population. Amendments that resulted from an organizational restructure in September, 2006, were simply administrative or housekeeping in nature and are considered minor changes.

Mr. Washington summarized the major changes made in the rules. The major changes consist of amendments to sections 005, 010, 116, 134, 137, 302, 402, 403, 405, 510, 511, 604, 606 and 608. Changes in these sections are necessary to reflect current processes and procedures (e.g., housing inmates, mail handling, inmate religious practices, searches of persons and vehicles, visiting and volunteer services), revise terminology and definitions and remove sections that no longer impact public rights, interests, or privileges.

It was requested that in section 116 regarding Custody of Evidence, that disposing of contraband under the law needs more direction. Also, members were concerned that the language regarding Internal Review Boards in section 134 is confusing.

It was recommended by the Committee that the Proclamation be approved with the suggestion that the Department of Corrections, on page 12, section 116.03, revise the section to read on the 3rd and 4th line as follows: "claimant but may be disposed of according to law and the Department's standard operating procedures."

On page 14, section 134.03.b., it was recommended that this section be approved with the suggestion that the Department of Corrections remove the capitals letters on the Internal Review or Human Subject Review Board so that it is clear that this is not a defined term within the rules and that it actually refers to a board that might operate within a college or university.

MOTION: **Representative Bock moved to recommend to the full Committee that the Proclamation of the Department of Correction be approved, as adopted, with the condition that clarifying language noted in the previous paragraph be inserted. Motion carried by voice vote.**

DOCKET 49-0101-0701: **Temporary Rule of the Board of Certified Shorthand Reporters.**

Chairman Smith recognized **Tana Cory**, Bureau Chief, Bureau of Occupational Licenses, to explain the rule.

Ms. Cory said the rule changes are necessary to protect the public safety by providing an accurate Idaho Code citation regarding the Certified Shorthand Reporters Board's legal authority and to provide a current address and contact information for the Board.

MOTION: **Representative Luker moved to recommend to the full Committee that the Temporary Rule of the Board of Certified Shorthand Reporters be approved as adopted. Motion carried by voice vote.**

DOCKET 21-010-1-0701: **Pending Rules of the Division of Veterans Services.**

Chairman Smith recognized **David Brasuell**, Administrator, Division of Veterans Services to explain.

Mr. Brasuell said these rules are being proposed to clarify the existing rules sections. The proposed changes will provide definitions of previously undefined terms; clarify definitions; provide increased detail on the basis for discharge from a veterans home; and, revise the look back period for disposal of assets to match federal program requirements.

MOTION: **Representative Luker moved to recommend to the full Committee that the Pending Rules of the Division of Veterans Services be approved as adopted. Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the Subcommittee, the meeting was adjourned at 4:00 P.M.

Representative Leon Smith
Subcommittee Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 23, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representative Kren

GUESTS: Patti Tobias, Administrative Director of the Courts; Tana Cory, Bureau Chief, Bureau of Occupational Licenses; Skip Smyser, Attorney

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Wills moved to approve the minutes of the meeting held on January 21, 2008, as written. Motion carried by voice vote.

RS 17559C1: Chairman Clark recognized **Patti Tobias** to explain the proposed legislation.

Ms. Tobias said this legislation comes from the counties in order to provide training and certification of misdemeanor probation officers through the Police Officer Standards and Training Academy (POST.)

The bill was developed and recommended by the Supreme Court's and Idaho Association of Counties' Shared Employees Committee and in coordination with the director of the POST Academy. It establishes that counties shall provide misdemeanor probation services.

The maximum monthly supervision fee charged to persons on misdemeanor probation is increased to match the maximum fee assessed felony probationers, and \$1.00 of each monthly fee is to be deposited in the POST fund to help offset the cost of the training of misdemeanor probation officers.

The bill also provides misdemeanor probation officers with authority to make arrests for probation violations occurring in the presence of peace officers, and provides increased penalties for assaults and batteries on misdemeanor probation officers.

A member asked about the efficiency of the POST fund only collecting \$1.00. Ms. Tobias said the POST fee is collected typically on all criminal cases. The legislation is not intended to bind county commissioners to do more than they are currently doing.

Another member asked why on page 5, line 38, the language "in the presence of a peace officer" was inserted. Ms. Tobias said she would

find the answer to that question and reply to the Committee if the RS is introduced.

MOTION: **Representative Smith moved to introduce RS 17559C1. Motion carried by voice vote.**

RS 17420: Chairman Clark recognized **Tana Cory** to explain the proposed legislation. Ms. Cory said this legislation contains technical corrections and removes obsolete language. The bill will move the Certified Shorthand Reporters under the umbrella of the Bureau of Occupational Licenses. In answer to a question, Ms. Cory said the state certified shorthand reporters board is a self-governing board.

MOTION: **Representative Wills moved to introduce RS 17420. Motion carried by voice vote.**

RS 17555: Chairman Clark recognized **Skip Smyser**, representing the Idaho State Dental Association, to explain the proposed legislation.

This legislation will provide a personal representative, executor, heir or spouse of a deceased dentist six (6) months to allow that person to continue operating the dental practice of the deceased to preserve the business asset and to attempt to sell the practice.

Upon approval of the state board of dentistry, another six (6) months will be provided to sell the practice, so long as a good faith effort is being made and all diagnosis, care and treatment of the patients are made by an authorized and licensed dentist.

In answer to a question as to whether any other professions had a provision like this, Mr. Smyser said no other professions currently have this in Idaho to the best of his knowledge.

MOTION: **Representative Wills moved to introduce RS 17555. Motion carried by voice vote.**

RS 17626: Chairman Clark recognized **Representative Luker** to explain the proposed legislation.

Representative Luker said this legislation, which only deals with adult sex offenders, was drafted due to concerns expressed by constituents regarding the safety of children, property values and the fact that neighbors had no input or any way to have input regarding group housing for these offenders.

Currently sex offender and other types of transition group homes are being established in residential areas. Under the Fair Housing Act, persons suffering from alcohol and drug addiction are treated as disabled persons entitled to protection under the Act. Group homes for registered sex offenders have been established in family neighborhoods by using the condition of drug and alcohol addiction. According to the United States Department of Justice, Civil Rights Division, persons convicted as sex offenders are not considered disabled under the Fair Housing Act. This legislation sets a limit of two registered adult sex offenders in a

residential dwelling unit, provides for a judicial bypass in limited circumstances to exceed that limit, and gives cities and counties authority to exceed the limit by ordinance to allow and regulate group residence homes for sex offenders.

The legislation also provides a misdemeanor penalty for violation, requires the Department of Correction approval for group home residences while still supervising the offender and grandfathers current residence situations.

This legislation would not affect any non-residential areas. It is hoped that this bill will at a minimum impose a moratorium on any further group homes until cities and counties have an opportunity to set up procedures to deal with these homes.

The Chairman asked for a definition of "injunctive relief" used in the legislation. Representative Luker said the term is basically a cease and desist order.

MOTION: **Representative Wills moved to introduce RS 17626.** Representative Luker said RS 17626 needed a correction.

UNANIMOUS CONSENT: Representative Wills said he would withdraw his motion. Chairman Clark asked for unanimous consent of the Committee to withdraw the motion. There being no objection, the motion was withdrawn.

MOTION: **Representative Luker moved to introduce RS 17626 with a corrected reference to section 18-8330, changing that reference to read section 18-8331. Motion carried by voice vote.**

ADJOURN: Chairman Clark said there would be no meeting on Friday. The Committee will meet again on Tuesday, January 29, 2008. There being no further business to come before the Committee, the meeting was adjourned at 2:30 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 29, 2008

TIME: 1:35 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: See attached sign-in sheet

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Shirley moved to approve the minutes of the meeting held on January 23, 2008, as written. Motion carried by voice vote.

**RULES REVIEW
REPORT:
Department of
Juvenile
Corrections:** Subcommittee Chairman Leon Smith was recognized to report on the review of the rules submitted to the Committee. Representative Smith said the Subcommittee recommends to the full Committee that the pending rules of the Department of Juvenile Corrections be approved with the **exception of Docket 05-0103-0701, IDAPA 05.01.03, 102.01.a and IDAPA 05.01.03, 102.02.c.** It is recommended that the full Committee reject the amended language relating to the appointment of alternates from these two subsections.

By way of explanation for the rejection of the new language in the two subsections, those rules pertain to the appointment of an alternate on the Board that reviews juveniles. Representative Luker said the provision allowed for appointing an alternate which seemed to go beyond the statutory authority for appointing board members. Another consideration was a consistency in reviewing the juveniles.

MOTION: **Representative Smith moved to accept the recommendation of the Subcommittee on the Department of Juvenile Corrections rules. Motion carried by voice vote.**

**Rules of the
Idaho State
Police:** Representative Smith said the Subcommittee recommends to the full Committee that the pending rules of the Idaho State Police be approved.

MOTION: **Representative Smith moved that the full Committee accept the recommendation of the Subcommittee that the pending rules of the Idaho State Police be approved. Motion carried by voice vote.**

**Notice of
Proclamation of
the Idaho Board
of Correction:**

Representative Smith said the Subcommittee recommends to the full Committee that the pending rules on the Notice of Proclamation be approved as adopted, with a change made on page 12, section 116.03, in the last line, by inserting the word law so that the language reads “but may be disposed of according to law and the Department’s standard operating procedures.” Also, on page 14, section 134.03.b., that the Department remove the capital letters on the “Internal Review or Human Subject Review Board” so it is clear that this is not a defined term and that it actually refers to a board that might operate within a college or university.

MOTION:

Representative Smith moved that the full Committee accept the recommendation of the Subcommittee that the Notice of Proclamation of the Idaho Board of Correction be approved with the above language clarifications made. Motion carried by voice vote.

**Rules of the
Division of
Veterans
Services:**

Representative Smith said the Subcommittee recommends to the full Committee that the pending rules of the Division of Veterans Services be approved.

MOTION:

Representative Smith moved that the full Committee accept the recommendation of the Subcommittee that the pending rules of the Division of Veterans Services be approved. Motion carried by voice vote.

**Rules of Idaho
Certified
Shorthand
Reporters Board**

Representative Smith said the Subcommittee recommends to the full Committee that the temporary rules of the Idaho Certified Shorthand Reporters Board be approved.

MOTION:

Representative Smith moved that the full Committee accept the recommendation of the Subcommittee that the temporary rules of the Idaho Certified Shorthand Reporters Board be approved. Motion carried by voice vote.

H 353:

The Chairman thanked Representative Smith for his work on the rules review, and recognized **Representative Bock** to explain H 353.

Representative Bock said this legislation was drafted to encourage citizens to volunteer their services by reducing their exposure to liability for services to nonprofit organizations when done without compensation. The legislation creates a limited exemption.

Representative Bock asked to yield to attorney **John McGown** who had originally requested that the bill be drafted. Mr. McGown said he has been a tax attorney for 25 plus years, representing charities over those years. There has been a gap in the Idaho statute dealing with nonprofit organizations. One of the requirements in current law requires that the nonprofit organization “regularly bestow benefits to the community at large.” This requirement is very subjective.

This legislation would add an objective standard that will allow the requirement to be made if the organization “is tax exempt under section 501(c)(3) of the Internal Revenue Code.” The legislation also clarifies that

nonprofit organizations may be created in the form of a trust.

PRO: **Bob Aldridge**, attorney representing Trust Estate Professionals of Idaho, Inc., spoke in favor of the bill.

MOTION: **Representative Bock moved to send H 353 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Bock will carry the bill on the floor.**

H 381: Representative Smith took over the Chairmanship so that Representative Clark could explain the bill.

This bill provides for the electronic monitoring of violent sexual predators who are placed on probation or parole. Section (2), lines 19 through 24 of the bill contain the language requiring violent sexual predators to be monitored for the duration of the person's probation or parole period. Any person who intentionally alters, tampers with, damages, or destroys any electronic monitor shall be guilty of a felony. There is no fiscal impact because the Department of Correction is all ready doing this.

PRO: **Kevin Kempf**, Division Chief, Idaho Department of Correction, was recognized. Mr. Kempt said there are currently 1400 sex offenders throughout the state of Idaho. Thirty-nine of those are considered violent sexual offenders. Currently five violent sexual predators are under the Department's supervision. This legislation enhances the Department's ability to protect the public.

Kathy Baird, management assistant, Sex Offender Classification Board, said each case is considered on its own merits using criteria outlined in current code.

Mr. Kempf said GPS monitoring is relatively new. Passive GPS monitors are currently being used. Active GPS monitors would require surveillance 24 hours a day, 7 days a week and resources are not currently available to do this. Violent sexual offenders are statewide and active GPS monitors would have a fiscal impact on the Department.

Most states are currently doing only passive monitoring. Idaho is one of 16 states that has a juvenile registration. If a juvenile is adjudicated, that juvenile could be classified as a violent sexual predator.

Ms. Baird was asked how many people serve on the Classification Board. The answer was four members. The Board only reviews offenders who are identified as "high risk."

MOTION: **Representative LeFavour moved to send H 381 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Clark will carry the bill on the floor.**

ADJOURN:

There being no further business to come before the Committee, the meeting was adjourned at 2:15 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 31, 2008

TIME: 1:32 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See attached sign-in sheets

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on January 29, 2008, as written. Motion carried by voice vote.

RS 17712: Chairman Clark said the first item on the agenda was **RS 17712** and **Bill von Tegen**, Deputy Attorney General, was recognized to explain the proposed legislation.

RS 17712 eliminates discrepancies between Idaho's extradition procedures and those of other states. Idaho's current extradition statutes originated from the 1927 Uniform Criminal Extradition Act, whereas the majority of states utilize the Uniform Criminal Extradition Act passed by the Commission on Uniform State Laws in 1936.

This legislation updates Idaho Code to the 1936 act and makes more uniform the extradition law of this state and other states, improving the efficiency of the extradition process. It also allows the state of Idaho to more greatly facilitate the process of interstate extradition.

MOTION: **Representative Wills moved to introduce RS 17712. Motion carried by voice vote.**

H 352: Chairman Clark recognized **Dawn Peck**, manager of the Idaho State Police Bureau of Criminal Identification, to explain the bill.

This bill clarifies the authority of the Idaho State Police to retain the full normal federal background check fee when the positive identification is made at the state level and the state does all the processing without submitting the fingerprints to the FBI for processing. The FBI authorizes states to retain the FBI's fee if a positive identification is made at the state level and the criminal history is obtained via the Interstate Identification Index system.

During fiscal year 2007, the bureau did the complete processing on 4,139 checks where the requester received the full benefit of the national check,

but only paid the state fee. However, the bureau did all of the processing of both the state and federal records. Had the department collected the full fee, it would have collected an additional \$99,336 in FY 2007.

MOTION: **Representative Nielsen moved to send H 352 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Kren will carry the bill on the floor.

H 417: The Chairman recognized **Representative Luker** to explain the bill.

Representative Luker said this bill deals with the housing of adult sex offenders in residential neighborhoods. There has been quite a growth of these transitional homes in the area recently. This legislation only addresses sex offender housing. In the past, the cities and counties have wrestled with this issue as to what they have the authority to do or not do.

This bill sets up a limit of two sex offenders in any residential dwelling unit. It provides for a judicial bypass in limited circumstances to exceed that limit. It gives cities and counties the authority to establish standards for the establishment and operation of residential houses for registered sex offenders. No one will be displaced by this bill. There is an exemption for group housing that is already in place as long as there are no more than eight residing in that home.

When an offender is on probation or parole under the supervision of the Department of Correction, the department must be notified by the person or the person's agent of any intent to reside with another person required to register as a sex offender. The department must approve the living arrangement in advance.

PRO: **Tiffany Tanner** was recognized to give her testimony. Ms. Tanner said she lives on a street with one of these transition houses for sex offenders. These men moved in a year ago and, as a neighbor, she was not informed that this was a group home for offenders. She expressed concern about the placement of transition houses and the fact that they were being located in neighborhoods with children all around. The school bus stop is within 25 feet of the home. The middle school bus arrives around 7:14 in the morning while it is still dark.

Ms. Tanner said she no longer feels safe in her own home. Her children are not allowed to play in the front yard. This bill is a great start in making family neighborhoods safer by regulating these group homes. She concluded her remarks by saying she hopes there will be more legislation drafted in the future which will help keep the children of Idaho safe. (Ms. Tanner's complete testimony, as well as letters in support of the legislation from two other individuals who did not give testimony are attached.)

CON: **Dale Blickenstaff**, chairman of Bethel Ministries, was recognized. Mr. Blickenstaff said Bethel Ministries has graduated 73 men from group homes where they have received intensive treatment. Of those 73, not one has reoffended. There has not been a repeated offense in any community in which Bethel Ministries is in. There are currently four

treatment facilities with about four or five persons in each facility. Of those, about 60% are sex offenders. Bethel Ministries would like to expand their facilities in other locations and this bill would appear to prevent this expansion.

**PRO WITH AN
AMENDMENT :**

Kris Ellis, representing the Idaho Health Care Association, was recognized. Ms. Ellis said the Association understands and supports the intent of the legislation. However there are federal, as well as state, regulated health care facilities. These residents are in the facilities because of health and mental disabilities. The Association is concerned with a conflict between the city and the state regarding these facilities. Many of these people are sent to the facilities by a judge.

Ms. Ellis said the Association would like to offer an amendment which would prevent state institutions from being included in the bill. On page 1, line 19 of the bill, add the following: "unless a person resides in a state licensed or certified facility for health or convalescent care." Ms. Ellis said the state requires that these homes be in a homelike environment.

PRO:

Bruce Chatterton, Planning Development Services Director with the city, was recognized. Mr. Chatterton said the city supports the legislation. The city recognizes the status of group homes. However, it is concerned with registered sex offenders. It would appreciate the authority to look at these situations on a case by case basis when it is warranted.

PRO:

Patty Bell spoke in favor of the bill. Ms. Bell became interested in the bill after she got a call from her daughter who was terrified when a sex offender moved into her neighborhood. Ms. Bell said her grandchild, who is five, is afraid to play outside. She concluded her remarks by asking that cities and counties be given the authority to control these transition homes.

**NEUTRAL
POSITION:**

Shane Evans was recognized to speak on behalf of Director Brent Reinke, Department of Correction. Mr. Evans said there are 1,338 sex offenders, of which 1,250 are registered and 987 are out in the community. Ninety-eight percent of all inmates return to the community. Stable housing is an effective way of treating recidivism.

The Department requires treatment that is ongoing and intensive. Awareness and education are the best tools that can be provided to the public. Higher risk offenders get more intensive treatment. The Department is currently working on a way to provide the public with the best information available. The Department invites cities, counties and communities to come together to come up with solutions to problems.

PRO:

Travis Tanner was recognized to speak in support of the bill. Mr. Tanner thanked Representative Luker and others for drafting legislation to help assure the safety of the community.

PRO:

Bryan Fischer, executive director, Idaho Values Alliance, was recognized. Mr. Fisher said the Alliance's mission is to make Idaho the best place in the world to raise a family. The first concern is the protection of the purity of the home. The Alliance supports the bill. Although the Alliance works with Bethel Ministries, it does not feel that

these transition homes, located in the family neighborhood, promote the safety of the family. The Alliance does support the goals of Bethel Ministries.

PRO: **Robert Vande Merwe**, representing the Idaho Health Care Association, was recognized. Mr. Vande Merwe said the Association is in support of the bill with the proposed amendment.

CON: **Rob Lee**, executive director, Bethel Ministries, was recognized to give his testimony. Mr. Lee said he works closely within the group homes and with the probation and parole officers to make sure these homes are safe. None of the applicants can be violent sex offenders. Mr. Lee tries to use the same methods as the Department of Correction to determine risk and assessment of the individuals.

CLOSING REMARKS: **Representative Luker** was recognized to give closing remarks. These transition homes bring a different dynamic into the neighborhood. There is a continual rotation of people in these homes. It is not the intent of the bill to put Bethel Ministries out of business. The cities recognize there is a need for this type of treatment. The bill does not regulate light industrial and nonresidential areas.

Regarding an amendment to the bill, Representative Luker recommended language be added to the effect that state or federally licensed health or convalescent facilities are not residential dwelling units.

MOTION: **Representative Wills** moved to send H 417 to General Orders with the following committee amendment attached: On page 1, line 35, after the period, add this new sentence: For the purposes of this section a state or federally licensed health care or convalescent facility is not a residential dwelling unit. Motion carried by voice vote. Representative Luker will carry the bill on the floor.

H 369: Representative Smith took the Chairman's seat so that Representative Clark could explain the bill.

Representative Clark said he would go through the bill quickly and then he had a chart to give to each member (attachment) showing data as of June 30, 2007, on the Judges' Retirement Stabilization Fund.

This has been an ongoing battle since 1947. This concerns only Supreme Court justices, judges of the Court of Appeals and district judges since there were not magistrates at that time. Representative Clark then walked the members through the statement of purpose.

The bill provides a system for stabilizing the Judges' Retirement Fund. This retirement plan has assisted in the recruitment and retention of highly capable justices and judges. It is funded by a combination of civil filing fees, employee and employer contributions, and the return on the investment of funds. Since this is a small pension fund, it is more vulnerable to market fluctuations.

The bill does not change the benefits paid to retired judges or their survivors. It does not impose any additional fees, costs or fines. It

creates a Judges' Retirement Stabilization Fund roughly similar to the existing Budget Stabilization Fund. The fund would be supported by the transfer of a portion of fees, court costs, fines and forfeitures imposed under existing statutes.

If the assets in the Judges' Retirement Fund (JRF) were less than the Fund's actuarial accrued liabilities in a given year, the Treasurer would transfer an amount from the Judges' Retirement Stabilization Fund to the JRF. This amount would be the lesser of: (1) the value of the liabilities of the JRF less the value of the assets of the Fund; or (2) the amount of funds in the Judges' Retirement Stabilization Fund.

There would be a limit on the amount of funds that could be accumulated in the Judges Retirement Stabilization Fund. If the amount in this fund, plus the assets of the JRF exceeded the liabilities of the JRF by more than 10%, the excess would be transferred to the general fund.

If the amount in the Judges' Retirement Stabilization Fund exceeded the projected employers' contribution to the JRF for the coming fiscal year, no general fund moneys would be appropriated for the employers' contribution for that year. When this occurs, it would save approximately \$380,000 annually in general fund moneys.

MOTION: **Representative LeFavour moved to send H 369 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: **Representative Nielsen moved to send H 369 to the floor without recommendation. Representative Nielsen said this action on the bill would cause a full debate on the floor.** Representative Clark replied that since the bill is a funding bill, it would get a full debate on the floor with a Do Pass recommendation.

ROLL CALL VOTE: Roll Call Vote was requested.

SUBSTITUTE MOTION: The Substitute Motion was to **send H 369 to the floor without recommendation. Voting AYE: Representative Nielsen. Voting NAY: Representatives Smith, Harwood, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Ruchti, Bock and Chairman Clark. Motion failed 1-15-0.**

ORIGINAL MOTION: The Original Motion was to **send H 369 to the floor with a Do Pass recommendation. Voting AYE: Representatives Smith, Nielsen, Shirley, Wills, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Ruchti, Bock and Chairman Clark. Voting NAY: Representatives Harwood, McGeachin. Motion passed 14-2-0.**

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 4:00 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 5, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representative Ruchti

GUESTS: Director Brent Reinke and Tim Higgins, Gang and Intelligence Coordinator, Department of Correction; Mark Johnston, Board of Pharmacy; Tana Cory, Occupational License Bureau; Michael Henderson, Legal Counsel, The Courts

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bock moved to approve the minutes of the meeting held on January 31, 2008, as written. Motion carried by voice vote.

**PRESENTATION
ON GANG AND
INTELLIGENCE
PROGRAM:** The Chairman recognized **Brent Reinke**, Director, Department of Correction. Director Reinke asked to yield to **Tim Higgins**, Gang and Intelligence Coordinator, who would give the presentation.

Mr. Higgins gave each member a handout (attachment) regarding gang activity throughout the state of Idaho. There are about 30,000 violent street gangs, motorcycle gangs and prison gangs with approximately 800,000 members operating in the United States today. There are 1,738 supervised gang members in Idaho. Mr. Higgins said there are 7,358 gang members in prison and 12,685 on probation or parole. Of all violent incidents in prison, 84% involve one or more gang members.

Mr. Higgins outlined the problems Idaho faces in dealing with gangs. Some of those problems are: gang involvement is attractive, gang attacks are becoming more violent, gang leaders continue to conduct business while in prison and gang infiltration of agencies is becoming common. Also, there is no centralized criminal intelligence sharing system statewide.

Mr. Higgins went on to point out accomplishments in 2007 and concluded his remarks with programs in the planning stages for 2008. Those included the development of training programs and a program to advise local law enforcement when gang members are released from prison.

Mr. Higgins said there are no safe havens in Idaho. Drugs are a primary source of income, but not the only one. The Mexican mafia charges a street tax. Gang codes are being written in Mayan. The percentage of these gang members who are illegal is not currently known.

H 389: The Chairman thanked Mr. Higgins for the presentation and said the next item on the agenda was H 389. **Mark Johnston**, executive director of the Board of Pharmacy, was recognized to explain the legislation.

Mr. Johnston said the bill provides for the revision of Section 37-2726, Idaho Code, to address the absence in the statute of criminal penalties for wrongful disclosure of confidential patient information or wrongful accessing of confidential patient information. The bill makes such action a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed two thousand dollars, or both.

CON: **Holly Koole**, deputy prosecuting attorney, representing Heather Riley, Idaho Prosecuting Attorneys Association, said the Association would like to see an amendment drafted to include law enforcement, as well as peace officers.

MOTION: **Vice Chairman Smith moved to hold H 389 for a time certain until Wednesday, February 13, 2008, in order to give the interested parties time to bring back an amendment. Motion carried by voice vote.**

H 409: Chairman Clark recognized **Tana Cory** to explain the bill. This bill will move the Certified Shorthand Reporters under the umbrella of the Bureau of Occupational Licenses.

MOTION: **Representative Bolz moved to send H 409 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Labrador will carry the bill on the floor.**

S 1246: The Chairman recognized **Michael Henderson** to explain the bill. Mr. Henderson said this bill corrects a defect in the law. Current statutes require a judge to sequester a jury during its deliberations in a murder trial until the completion of the special sentencing proceeding in which the jury determines whether the death penalty should be imposed.

This has left judges uncertain on how to proceed in those cases in which there is to be no special sentencing proceeding because the state is not seeking the death penalty. This bill would remove this uncertainty by providing that a judge is not required to sequester the jury in first-degree murder cases when the state has not filed a notice of intent to seek the death penalty or has withdrawn such notice.

MOTION: **Representative Nielsen moved to send S 1246 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Nielsen will carry the bill on the floor.**

S 1247: The Chairman recognized **Michael Henderson** to explain the bill. This bill is also one of a series of bills recommended by the Supreme Court to correct defects or omissions in the laws.

Prior to the revision of the theft statutes in 1981, a statutory provision stated that it was a defense to embezzlement "that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith ... But this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against him." The

word "him" referred back to "another." When the statutes were revised, the word "him" was changed to "the accused." which changes the meaning of this provision and makes it nonsensical. This bill corrects this error.

MOTION: **Representative Bock moved to send S 1247 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Bock will carry the bill on the floor.**

H 382: Vice Chairman Smith took over the Chairman's seat so that Representative Clark could present the bill.

This bill provides restriction zones for sex offenders. It clarifies the premises to which sex offender access is prohibited and when such access is prohibited to children in school buildings, on school grounds and properties used by a school. It clarifies exceptions and provides additional exceptions to prohibited access.

Line 15 on page 1 includes property used for off campus activities. The language in lines 18 through 20 is the real reason this bill was drafted. This subsection makes it a misdemeanor for an adult criminal sex offender to reside within 500 feet of the property on which a school is located, measured from the offender's property line to the school's property line. Lines 34 through 41 include extracurricular school events and provide a definition for extracurricular.

Other exceptions were added to include voting and delivery of mail through an official post office located on school grounds.

Representative Clark said an amendment to the bill was drafted as follows: on page 1 of the printed bill, in line 30, following "2006" insert: "or if such person establishes his residence prior to the establishment of the school".

When asked about the inclusion of an emergency clause, Representative Clark said one could be added by the Committee, or added when the bill reaches the Senate.

Acting Chairman Smith pointed out that this bill will be returning every year to amend it or add something to it.

MOTION: **Representative Hart moved to hold H 382 for a time certain until Wednesday, February 13, 2008.** In support of the motion, Representative Bock said some of the members would appreciate some time to resolve some issues with the bill. Representative Boe asked about the inclusion of charter schools and virtual charter schools.

Acting Chairman Smith said there would be a committee consisting of Representatives Hart, Bock, Luker and LeFavour which would work with Representative Clark to add additional amending language so action can be taken on the bill. **Motion passed by voice vote.**

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:00 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 7, 2008

TIME: 1:35 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: Director Reinke; Rod Leonard; Jim Wrigley; Representative Ringo; Representative Trail; Patti Tobias; Colonel Johnson; David Hahn; Dan Chadwick; Val Gardner

SCR 124 Chairman Clark called the meeting to order. Since the minutes of the meeting held on February 5 were not complete, the Chairman said the Committee would hear the first item on the agenda which was SCR 124.

The Chairman recognized **Director Brent Reinke**, Department of Correction, to explain the resolution. Director Reinke said this concurrent resolution authorizes the lease-purchase of the correctional alternative placement program facility by the Board of Correction and Division of Public Works.

After negotiations, the Department was prepared to enter into a contract with Management & Training Corporation and MTC Corrections Holding, LLC for the lease-purchase of the Correctional Alternative Placement Program.

This agreement creates a significant cost avoidance for the state of Idaho. Both houses must agree on this concurrent resolution. It means that at the end of the twenty year period, the state will own the facility after paying a fee of \$1.00. Once the contract is approved, the facility will provide 400 beds for Idaho prisoners, parole violators and retained jurisdiction offenders. It would be located south of Boise.

Director Reinke asked to yield to **Rod Leonard**, Program Coordinator for the Idaho Department of Correction. Mr. Leonard gave each member a spreadsheet showing the lease-purchase payments vs. straight lease payments (attachment.) Both the lease purchase and straight lease payments include service rent, as well as principle and interest. The lease-purchase payments would not begin until the facility is operational.

Under this contract, MTC is passing savings directly onto the state. It costs much less to lease-purchase. This will be a very intensive treatment facility. In answer to a committee question regarding why MTC's lease-purchase is so reasonable, the response was they have these prisons all over the country.

The contract can be terminated if there is reasonable cause at any time. It must be renewed every five years.

When asked what the interest rate would be, **Mr. Jim Wrigley**, vice president of Wells Fargo Bank was recognized to answer. When the contract was written, the interest rate would have been 5.34%. The final rate will be determined when the contract goes into effect.

MOTION: **Representative Harwood moved to send SCR 124 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Labrador asked to be recorded as voting “no” on the motion. Representative Clark will carry the bill on the floor.**

RS 17790: The next item on the agenda was RS 17790 and the Chairman recognized **Representative Smith** to explain the proposed legislation. The Director of the Department of Juvenile Corrections wanted the ability to appoint an alternative to the Custody Review Board.

This concurrent resolution would reject amended portions of two subsections of a pending rule regarding the appointment of an alternative because the members felt it was not consistent with Legislative intent. The effect of this resolution would be to prevent the second sentence in the subsection of the agency rule from going into effect.

MOTION: **Representative Smith moved to introduce RS 17790 and send the bill directly to the second reading calendar. Motion carried by voice vote. Representative Smith will carry the bill on the floor.**

RS 17582C2: Chairman Clark recognized **Representative Ringo** to explain the legislation. Representative Ringo said this legislation relates to address confidentiality for victims of violence by the addition of a new chapter to the Idaho Code to provide a purpose, to define terms, to provide a procedure for an address confidentiality program and to provide penalty provisions relating to falsely attested applications.

The legislation also provides for certification cancellation and provides for the use of designated addresses. It would prohibit the disclosure of records and it contains exceptions. It provides that certain records in an address confidentiality program participant's file are exempt from disclosure.

Representative Trail was recognized to give his input. This RS is modeled after a Washington state statute. Twenty other states have similar legislation. The prosecutors support the bill.

MOTION: **Representative Nielsen moved to introduce RS 17582C2. Motion carried by voice vote.**

H 370: **Patricia Tobias**, Administrative Director of the Courts, was recognized to explain the bill.

The Supreme Court works very closely with the Idaho State Police and other law enforcement on matters relating to security and protection of judges. This bill will give the Idaho State Police (ISP) responsibility for

providing security and protection for Supreme Court justices and judges of the Court of Appeals, as well as responsibility for law enforcement at the Supreme Court Building.

Current statutes state that ISP provides security and protection for the Governor and for the Legislature when it is in session, and ISP is responsible for law enforcement at the Statehouse.

This bill would extend these responsibilities to the Supreme Court building and to Idaho's appellate justices and judges, thereby insuring their ability to act safely and without fear of intimidation.

Ms. Tobias asked to yield to **Lt. Colonel Johnson** to give his testimony. Colonel Johnson said this bill would broaden the scope of security afforded to the Supreme Court justices and judges.

The Governor will ask the Director of Law Enforcement to create a full time position to supplement the current position. One person would travel with the Supreme Court when the Court must travel. That person would be on call 24 hours a day. This would also help security for the far east end of the capitol mall.

Several years ago, the Chief Justice expressed concern about the lack of security of the Supreme Court while the Court was in session. That is one of the reasons why this legislation is brought forward.

David Hahn was recognized to explain the Fiscal Note. Mr. Hahn said there was a corrected Fiscal Note which reads: "Upon passage of this bill, it is anticipated that the Governor will support a budget increase for ISP. ISP estimates the cost to provide security for the Supreme Court building to be \$115,900 and 1.0 FTP."

MOTION: **Representative Smith moved to send H 370 to the floor with a Do Pass recommendation with a corrected Statement of Purpose. Motion carried by voice vote. Representative Shirley will carry the bill on the floor.**

H 408: The Chairman recognized **Patricia Tobias** to explain the bill. This bill comes before the Committee from the Counties and the Courts working together to establish a statutory framework for misdemeanor probation officers and to provide ongoing training for county probation officers through the POST Council.

The bill is endorsed and supported by the Criminal Justice Commission which is appointed by the Governor, comprised of all three branches of government, and meets monthly to address matters relating to our criminal justice system. Representative Clark and Representative Boe both contribute to the Commission on behalf of the House of Representatives.

It is estimated that over 14,000 misdemeanor offenders are supervised by almost 80 county misdemeanor probation officers in over 40 counties. This bill will provide ongoing education and training for these officers who

play such an important role in protecting the public, holding offenders accountable and reducing jail costs.

Ms. Tobias said the heart of the legislation would be found on page 5, section 6 and on page 6, section 7. In section 6, a new section has been added starting on line 43 which reads "the county commissioners shall provide for misdemeanor probation services...in those cases where such probation supervision has been ordered by the sentencing court...and perform such functions as are prescribed by the administrative district judges."

In section 7, page 6, this amendment would align the county probation supervision fee with the felony probation supervision fee set forth in section 20-225, Idaho Code. Amendments starting on line 13 provide the funding mechanism for the contemplated POST training. One dollar of each monthly fee will be deposited in the POST fund to help offset the cost of training of misdemeanor probation officers.

Ms. Tobias said the monthly fees collected, minus \$1.00 for each fee, would be deposited in a county misdemeanor probation fund. In order to explain further the monthly fee deposit, Ms. Tobias asked to yield to **Dan Chadwick, executive director of IAC.**

Mr. Chadwick said this fund is dedicated money. The Board of County Commissioners is allowed to add additional money to assist in the training of probation services.

- MOTION:** **Representative LeFavour moved to send H 408 to the floor with a Do Pass recommendation.**
- SUBSTITUTE MOTION:** **Representative Labrador moved to send H 408 to General Orders with committee amendments attached. Those amendments would be: in Section 5, on page 5, paragraph 5, to delete the new language on lines 37 through 39.**
- ROLL CALL VOTE:** On the Substitute Motion to send the bill to General Orders with committee amendments, **voting AYE: Representatives Harwood, Nielsen, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe and Chairman Clark. Voting NAY: Representatives Shirley, LeFavour, Ruchti and Bock. Totals: 10-4-2. Substitute Motion passed. Representative Hart will carry the bill on the floor.**
- ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 3:25 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 11, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None.

GUESTS: See attached sign-in sheet.

MOTION: Chairman Clark called the meeting to order and asked the members to review two sets of minutes. Representative Wills moved to approve the minutes of the meeting held on February 7, 2008, as written. Motion carried by voice vote. Representative Bolz moved to approve the minutes of the meeting held on February 5, 2008, as written. Motion carried by voice vote.

S 1260: Chairman Clark recognized **Senator Brad Little** to explain the bill. The Senator said people in Idaho are not fond of animal cruelty. This bill provides that persons who knowingly or intentionally participate in certain activities related to dogfighting exhibitions shall be guilty of a felony.

State prosecutors indicate that there is evidence of dogfighting in the state. It is the hope that federal prosecutors will take on these cases if they become a felony. It was the Senator's understanding that federal prosecutors are reluctant to handle misdemeanor cases.

There are exceptions in the bill for the use of dogs in the management of livestock or the training, raising, breeding or keeping of dogs for any purpose not prohibited by law. An exhibition of dogfighting shall not be construed to mean the type of confrontation that happens unintentionally because of a chance encounter between two or more uncontrolled dogs.

The legislation is targeted for persons that keep dogs for fighting, killing, maiming or injuring other dogs. Another issue is a genetic issue. If these dogs are selectively bred, those genetics would not be in the best interest of public safety.

Declaring dogfighting to be a felony will be a large deterrent to this type of activity. In these cases, the punishment will fit the crime.

PRO: **Wyoma Clouss** was recognized to give her testimony. Ms. Clouss said she and her husband have shown dogs for 34 years. She is an American Kennel Club licensed judge of terrier and working breeds. She fully supports S 1260 which makes the brutal crime of organized dogfighting a felony. Law enforcement people need this type of tool to stop dogfighting

in the state.

- PRO:** **Larry Sandusky** was recognized to give his testimony. Mr. Sandusky said he is a hunter, breeder and trainer of hunting dogs. The Idaho Brittany Club asked him to speak to this bill. The club supports S 1260 which makes dogfighting a felony.
- PRO:** **Mike Kane**, attorney, spoke in favor of the bill, saying that under current statutes Idaho is one of only two states that charges this type of crime as a misdemeanor. This bill will help deter this type of activity. The bill will also help capture everybody who might have a monetary interest in dogfighting.
- PRO:** **Heather Reilly**, representing the Idaho Prosecuting Attorneys Association, was recognized. The association fully supports S 1260. Judges will look at each of these dogfighting cases individually to decide what action is appropriate.
- MOTION:** **Representative Boe moved to send S 1260 to the floor with a Do Pass recommendation.** In support of her motion, Representative Boe said this issue has been before the Legislature for several years. There were some concerns with past language and those concerns have been addressed with this bill.
- ROLL CALL VOTE:** **Voting AYE on the motion: Representatives Clark, Smith, Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock and Ruchti. Totals: 16-0-0. Motion unanimously passed.**
- RS 17844C1:** **Representative Ruchti** was recognized to explain the proposed legislation. The legislation provides additional protection to the elderly and the disabled under the Idaho Consumer Protection Act. This is a very tight package of statutes. It deals with a private cause of action.
- In addition to remedies already available under the Idaho Consumer Protection Act, with this legislation the elderly and the disabled may recover from the offending party \$15,000 or treble the actual damages, whichever is greater.
- In order to qualify for this enhanced penalty, the court must find that the offending party knew or should have known its conduct was against an elderly or disabled person and that the conduct caused one of the damages listed in the legislation.
- MOTION:** **Representative LeFavour moved to introduce RS 17844C1.**
- SUBSTITUTE MOTION:** **Representative Luker moved to return RS 17844C1 to the sponsor.** Representative was concerned about the 25% loss contained in the legislation. It might do more harm to the victim.
- Representatives Labrador and LeFavour spoke in favor of the original motion. Representative Nielsen spoke in favor of the substitute motion.
- Substitute motion failed by voice vote.**

**ORIGINAL
MOTION:**

Original motion to introduce RS 17844C1 passed by voice vote.

RS 17856C1:

Representative LeFavour was recognized to explain. This legislation will provide treatment focused alternative sentencing for certain mandatory minimum sentences. It will allow judges, where appropriate, to sentence those whose crime was primarily the result of addiction, to treatment so as to more effectively rehabilitate offenders, reduce recidivism and slow the growth in Idaho's non-violent offender population.

Section 7 of the legislation allows for a report to JFAC, the senate judiciary and rules committee and the house judiciary and rules committee and the governor by the Supreme Court and the department of correction on the availability of resources for sentencing alternatives.

MOTION:

Representative Nielsen moved to introduce RS 17856C1. Motion carried by voice vote.

S 1270:

Patricia Tobias, executive administrator of the Supreme Court, was recognized to speak to the bill.

This bill would add a fourth judge to the Idaho Court of Appeals. The addition of this position has been recommended by the Supreme Court and the Task Force on Idaho's Court of Appeals. Ms. Tobias gave each member an "Index of Task Force Recommendations" (attachment.)

The Legislature created the Court of Appeals in 1982 to assist the Supreme Court in handling Idaho's burgeoning appellate caseload and to reduce delays in deciding appeals. The Court of Appeals has accomplished this mission, serving Idaho with distinction and achieving an outstanding record of quality and efficiency.

However, the Court's caseload has increased from 206 appeals in 1982 to an average of over 500 appeals per year. The addition of a fourth judge, with the Court continuing to sit in three-judge panels, will enable the Court to achieve greater efficiency in the resolution of appeals and to issue the highest quality of opinions.

Ms. Tobias asked to yield to retired Supreme Court Chief Justice Linda Copple Trout. Justice Trout said the Task Force on Idaho's Court of Appeals issued its report in December, 2007. One of its recommendations was to add an additional judge to the Court of Appeals. It recommended that 100 cases per judge per year be the baseline of productivity, with flexibility for increases ranging up to 120 cases per year per judge.

So far, the Court of Appeals has been able to handle the influx of cases through the help of senior and pro tem judges. However, this is not a permanent solution.

MOTION:

Representative Wills moved to send S 1270 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Clark will carry the bill on the floor.

S 1271: **Patricia Tobias** was again recognized to explain the bill. Ms. Tobias said these three bills were drafted because of recommendations of the Task Force report. This bill provides that the State Law Library will continue to be in Boise, but removes the requirement that it be located in either the State Capitol or the Supreme Court building.

This will allow greater flexibility and efficiency in the use of the Supreme Court building and open up additional options for housing the library. The bill contains an emergency clause, which will permit moving the library and remodeling and use of the present space in the most timely and efficient manner during the current fiscal year.

MOTION: **Representative Shirley moved to send S 1271 to the floor with a Do Pass recommendation. Motion carried by voice vote.**
Representative McGeachin will carry the bill on the floor.
Representatives Hart and Harwood asked to be recorded as voting "no" on the motion.

S 1272: Chairman Clark recognized **Ms. Tobias** to explain. This bill amends Section 1-1102, Idaho Code, which addresses the salaries, bonds, oaths and expenses of court reporters.

The bill removes obsolete language regarding the salaries set for court reporters in 1989 and allows the Legislature to continue to approve changes in employee compensation for court reporters through the normal CEC and appropriation process for state employees.

The bill also removes a provision requiring a court reporter to take an oath that the reporter has prepared transcripts in the order in which the orders for such transcripts have been served. This requirement is often not the most efficient or appropriate order in which to prepare such transcripts.

MOTION: **Representative Wills moved to send S 1272 to the floor with a Do Pass recommendation. Motion carried by voice vote.**
Representative Wills will carry the bill on the floor.

ADJOURN: Prior to adjournment, Chairman Clark said the Committee would meet on Friday, February 15, 2008. Also the committee appointed to study and recommend new language for H 382 would meet after adjournment. There being no further business to come before the Committee, the meeting was adjourned at 2:55 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 13, 2008

TIME: 2:05 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None.

GUESTS: See attached sign-in sheets

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Wills moved to approve the minutes of the meeting held on February 11, 2008, as written. Motion carried by voice vote.

**UNANIMOUS
CONSENT:** Chairman Clark asked for unanimous consent to move the following eight senate bills: S 1326, S 1327, S1328, S 1331, S 1333, S 1335, S 1334 and S 1336 sponsored by Robert Aldridge into the Smith Subcommittee consisting of Representative Smith, Chairman, and Representatives Wills, Luker, Bock and Ruchti, for the Subcommittee's review and recommendation to the full Committee. There being no objection, those bills were so moved.

Representative Smith said the Subcommittee would meet on Tuesday, February 19, after the full Committee meeting. Representative Smith asked that any other Robert Aldridge bills received before that date also be included in the package of bills for review.

S 1261: Chairman Clark recognized **Rex Blackburn**, uniform law commissioner, to explain the bill.

Mr. Blackburn said this will add a new chapter entitled "Uniform Mediation Act" to the Idaho Code. The purpose of the Uniform Mediation Act is to provide parties involved in the mediation of disputes uniform rules intended to facilitate amicable resolution of disputes by promoting candor of the parties and confidentiality of communications made incident to mediation. The act will provide rules for non-judicial mediations that are uniform with recent rules adopted by the Idaho Supreme Court.

MOTION: **Representative LeFavour moved to send S 1261 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative LeFavour will carry the bill on the floor.**

S 1262: The Chairman recognized **Dale Higer**, uniform law commissioner, to explain.

This legislation amends the Idaho Entity Transactions Act to incorporate changes made to the Model Entity Transactions Act by the National Conference of Commissioners on uniform state laws. The bill clarifies the language to make it more user friendly.

MOTION: **Representative Bock moved to send S 1262 to the floor with a Do Pass recommendation.** Representative Bock said this is a pretty customary procedure. **Motion carried by voice vote. Representatives Harwood, McGeachin and Kren asked to be recorded as voting “no” on the motion. Representative Bock will carry the bill on the floor.**

S 1263: The Chairman recognized **Mr. Higer** to explain.

This legislation adds a new chapter to the Idaho Code, to be known as Chapter 15, Uniform Child Abduction Prevention Act. The purpose of the Uniform Child Abduction Prevention Act is to provide courts with guidelines to follow during custody disputes and divorce proceedings, to help courts identify families at risk for abduction and to provide methods to prevent the abduction of children.

The bill anticipates cooperation and communication among courts. It lists actions for abduction prevention measures. It sets out factors to determine the risk of abduction. It lists provisions and measures to prevent abduction. If the court finds that there is a credible risk that a child is likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child. It then lists the duration of the abduction prevention order.

The act does not address child trafficking. The act is designed to protect children from abduction.

MOTION: **Representative Shirley moved to send S 1263 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: **Representative Hart moved to hold S 1263 for a time certain until Wednesday, February 27, 2008, in order to give the Committee more time to study the language of the bill.**

When asked how the commissioners determine which acts to change, Mr. Higer said the commissioners donate over 1,000 hours studying these issues. Family law has endorsed this legislation. It brings into one location child abduction prevention. **Substitute Motion carried by voice vote. The bill will be held for a time certain until Wednesday, February 27.**

H 389: The Chairman recognized **Mark Johnston**.

Mr. Johnston said he had amendments to present to the Committee in order to resolve previously mentioned concerns with the legislation. The amendments now include specifically defined attorneys, when engaged in enforcing law relating to controlled substances, to the list of authorized users of the Controlled Substance Prescription Database (CSPD): 37-2726(2)(h), Idaho Code.

The amendments strike a reference to section 37-2730A(4), Idaho Code, from section 37-2726(5). The amendments eliminate any person, who “attempts to obtain” information from the CSPD from the list of those guilty of a misdemeanor: 37-2726 (5). An the amendments separate any person who “knowingly obtains” from any person who “rediscloses” information obtained from the CSPD, by establishing section 37-2726(6) for redisclosers and leaving knowingly obtainers solely in 37-2726(5).

MOTION: **Representative Nielsen moved to send H 389 to General Orders with committee amendments attached. Motion carried by voice vote. Representative Nielsen will carry the bill on the floor.**

H 382: The Chairman recognized **Representative Hart** to discuss the bill. A subcommittee met to recommend some clarifying language to the bill. It agreed on a concept of addressing concerns on the language. However, at this time no language has formally been drafted.

MOTION: **Representative Hart moved to hold H 382 for a time certain until Thursday, February 21, 2008. Motion carried by voice vote.**

H 442: Chairman Clark recognized **Representative Mathews** to explain the bill.

This legislation modifies Sections 18-1505 (c) and 39-5302 (7), Idaho Code, to clarify that unjust or improper use of a vulnerable adult’s financial power of attorney falls within the definition of exploitation because it is a misuse of a vulnerable adult’s funds, property, or resources.

Idaho’s Adult Protection investigators and many private attorneys receive complaints involving such unjust or improper use of a financial power of attorney. Although misuse of a vulnerable adult’s financial power of attorney certainly qualifies as exploitation of the vulnerable adult, when these cases are reported to law enforcement and county prosecutors, they are often improperly characterized by law enforcement, city attorneys, and county prosecutors as civil matters not subject to criminal prosecution.

This change is proposed so that there is no question that unjust or improper use of a vulnerable adult’s financial power of attorney falls within the definition of exploitation.

MOTION: **Representative Smith moved to send H 442 to the floor with a Do Pass recommendation.**

PRO: **Robert Aldridge** stood in support of H 442, saying the language in the bill was worked on for the past three years. This legislation gives a much clearer sense of what is trying to be accomplished. It gives the law teeth.

PRO: **Sarah Scott**, Idaho Commission on Aging, was recognized to speak to the bill. Ms. Scott said the Idaho Commission on Aging is responsible for investigating abuse, neglect and exploitation of vulnerable adults.

Exploitation means an action which may include, but is not limited to, the unjust or improper use of a vulnerable adult’s financial power of attorney, funds, property or resources by another person for profit or advantage.

The bill clarifies the existing statute to specifically identify misuse of a financial power of attorney as one type of action included in the definition of exploitation. It will help prevent vulnerable adults from unnecessarily enrolling in Medicaid services. Adult protection workers and others assisting vulnerable adults will be able to demonstrate to law enforcement officers, prosecutors and judges that misuse of a financial power of attorney is a criminal matter. The bill will provide appropriate protection for Idaho's vulnerable adults.

PRO: **Michael Middleton**, adult protection supervisor, spoke in favor of the bill. Mr. Middleton said there has been a tremendous amount of misuse of a power of attorney.

SUBSTITUTE MOTION: **Representative Ruchti moved to send H 442 to General Orders with committee amendments attached as follows: On page 1 of the printed bill, line 32, after "unjust" delete the "or" and insert "and." Also on page 2 of the printed bill, line 32, after "unjust", delete the "or" and insert "and."**

Speaking against the substitute motion, Representative Wills said law enforcement will believe, if "and" is added to the bill, that it will set too high of a standard to prosecute.

ROLL CALL VOTE: **On the Substitute Motion to send to General Orders with committee amendments: voting AYE: Representatives Hart, Labrador, Luker, Boe, LeFavour and Ruchti. Voting NAY: Representatives Smith, Harwood, Nielsen, Shirley, Wills, McGeachin, Bolz, Kren, Bock, Clark. Motion failed 6-10-0.**

ROLL CALL VOTE: **On the Original Motion to send H 442 to the floor with a Do Pass: voting AYE: Representatives Smith, Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Ruchti, Bock, Clark. Motion passed 16-0-0. Representative Mathews will carry the bill on the floor.**

S 1248: **Michael Henderson** was recognized to explain the bill.

This bill clarifies the method of filling temporary vacancies on the Supreme Court that arise when a justice is unable to hear a particular case due to absence, disability or disqualification, or when the Governor has not yet filled a vacancy on the court.

It provides that in such cases, the Supreme Court may assign a senior justice, an active or senior district judge, or an active or senior magistrate judge to hear the case and to exercise the powers of a Supreme Court justice with regard to that case.

MOTION: **Representative Shirley moved to send S 1248 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Shirley will carry the bill on the floor.**

S 1288: **Michael Henderson** with the Courts was recognized to speak to the bill.

This bill would update and streamline the statutes relating to district

magistrate commissions, which appoint magistrate judges. It would provide that the magistrate judge member of each commission, who currently has no vote, would be a voting member.

It would also provide that the trial court administrator of each district would be the secretary of the commission, and the current requirement of keeping duplicate minutes would be eliminated. The bill provides that an attorney member would be disqualified from serving if the attorney was a law partner of an attorney magistrate candidate within the previous five years.

The bill eliminates an obsolete provision giving the commission the duty to recommend the salaries of magistrate judges. It also includes the board of county commissioners' authority to waive the right to a resident magistrate judge in the chapter listing the powers of the county commissioners.

MOTION: **Representative Ruchti moved to send S 1288 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Wills will carry the bill on the floor.**

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 4:30 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 15, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representatives Smith, Harwood, Wills, Kren, Boe

GUESTS: Sen. Kelly, Jeff Anderson, Director Callicutt, Olivia Craven

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bock moved to accept the minutes of the meeting held on February 13, 2008, as written. Motion carried. The Chairman gave the outgoing page a token of the Committee's appreciation and thanked him for all of his hard work during this first part of the session.

S 1273: The Chairman recognized **Senator Kate Kelly** to explain.

Senator Kelly gave the members a report from the office of the Attorney General on Idaho Code, Section 25-3504, Cruelty to Animals (attachment.)

This legislation amends Idaho's animal cruelty statute to clarify that the statute's provisions apply to persons who are not the animal's owner.

MOTION: **Representative Ruchti moved to send S 1273 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Ruchti will carry the bill on the floor.

S 1282: The Chairman recognized **Jeff Anderson**, Director of the Lottery Commission, to explain.

The bill gives the director of lottery security the authority to require fingerprint-based criminal history checks of the Idaho central database and the federal bureau of investigation's criminal history database on vendors, lottery retailers and bingo and raffle operators.

MOTION: **Representative Nielsen moved to send S 1282 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Nielsen will carry the bill on the floor.

S 1287: **Director Callicutt**, Department of Juvenile Corrections, was recognized to explain the bill.

This legislation will amend Section 20-520, Idaho Code, of the Juvenile

Corrections Act to clarify current language that the opinions of the Custody Review Board are determinations, not recommendations. The term “opinions” has been causing confusion as it is currently written.

MOTION: **Representative Nielsen moved to send S 1287 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative McGeachin will carry the bill on the floor.

S 1317: The Chairman recognized **Olivia Craven**, Commission of Pardons and Parole, to explain.

This legislation will allow the Commission to release offenders onto parole on the last business day prior to their parole eligibility date, when that date falls on a Saturday, Sunday or legal holiday.

The purpose of the bill is to allow commission staff and IDOC record staff, who do not typically work on weekends or holidays, to verify that all releases of offenders from custody are proper. This will help ensure that offenders are released in a timely manner.

MOTION: **Representative LeFavour moved to send S 1317 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative LeFavour will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 1:45 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 19, 2008

TIME: 2:20 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See attached sign-in sheet

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on February 15, 2008, as written. Motion carried by voice vote.

**UNANIMOUS
CONSENT:** The Chairman asked for Unanimous Consent to move S 1320 to Thursday's agenda in order to hear it along with a companion bill. There being no objection, S 1320 was so moved.

S 1349: **Representative Luker** was recognized to explain the bill.

This is the public misuse of funds bill. A similar bill was drafted last year but there were concerns voiced at that time with some of the language. Representative Luker worked with Senator Kelly, the Association of Counties and others to draft the current language.

The bill was drafted because a credit card was used by a city employee to go on a hunting trip. The statute did not address credit card use. This bill addresses all aspects of misuse of public funds. It clarifies that all state and local officers and employees who have access to public funds are included.

It sets out misdemeanor and felony penalties, adjusts the statute of limitations for claims for violations and amends certain definitions. It also adds a definition of public officer.

Section 2 deals with grading and punishment for misuse of funds. The bill provides a higher standard for state employees. If there is a misuse of public funds in an amount which exceeds \$300, the crime is a full felony. Otherwise, it is a general felony.

If there is a second violation, that public officer or employee shall be terminated, must make restitution of any public money misused, plus any profits that are made and shall be disqualified from future employment as a public officer or public employee.

The bill also includes an emergency clause.

In answer to a question regarding the statute of limitations, Representative Luker said this is the standard misdemeanor statute of limitations, which has been extended up to five years.

PRO: **Dan Chadwick**, executive director of the Idaho Association of Counties, was recognized to speak to the bill. Mr. Chadwick said it can take months to a couple of years to figure out that a misuse of funds is happening. There can be multiple years of audits. On behalf of the Counties, we support this bill. It is a very concise way to deal with this type of theft.

PRO: **Mike Kane**, representing Idaho Counties Risk Management Program (ICRMP), was recognized. Mr. Kane reiterated that these cases often take several years to figure out. This is the reason for the five year statute of limitations. The \$300 amount comes out of the current grand theft law. ICRMP appreciates and supports this bill.

MOTION: **Representative Smith moved to send S 1349 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: **Representative Nielsen moved to send S 1349 to General Orders with amendments attached as follows: On line 21, change \$300 to \$500 and do the same on lines 27, 36 and 39.**

After further discussion and support of the original motion by the Committee, **Representative Nielsen asked for unanimous consent to withdraw the substitute motion. There being no objection, the substitute motion was withdrawn.**

ORIGINAL MOTION: The original motion was to send S 1349 to the floor with a Do Pass recommendation. **Motion carried by voice vote.** Representative Luker will carry the bill on the floor.

S 1356: The Chairman recognized **Mike Kane**, representing the Sheriffs' Association, to explain the bill.

The purpose of this bill is to clarify that a convicted felon may not run for the office of county sheriff. The sheriff is the chief law enforcement officer of the county but, under current law, a felon may run for the office. The bill also requires a newly elected sheriff to seek training sponsored by the POST Council and the Idaho Sheriff's Association.

MOTION: **Representative Wills moved to send S 1356 to the floor with a Do Pass recommendation.**

In answer to a question regarding training by the POST Council, Mr. Kane said the bill requires a newly elected sheriff to take a tutorial provided by POST.

Motion carried by voice vote. Representative Kren will carry the bill on the floor. Representatives LeFavour and Hart asked to be recorded as voting "No" on the motion.

S 1372:

Michael Kane was recognized to explain the bill.

The purpose of the bill is to clarify that a person who violates Idaho Code, Section 54-2702(2), pertaining to transporting scrap in an amount over one hundred pounds, may be validly prosecuted under Idaho Code, Section 54-2703, which is the penalty section for violation of Section 54-2702.

When Section 54-2703 was originally drafted, no reference was made to persons violating Section 54-2702(2), thereby creating a loophole for those in violation to escape prosecution and punishment.

Mr. Kane said people are stealing copper pipe and selling it to scrap metal dealers. The bill says if you are transporting scrap which weighs over 100 pounds, you must have a receipt. The bill adds a penalty for violations of the act.

Mr. Kane said it was the plan to return next year with a more omnibus bill. This legislation closes a specific loophole that exists in the code. Mr. Kane said this bill is not trying to change the current law. Only if a person obtains this scrap from another, does that person need to have a receipt. A person must plan to intentionally violate the law.

Representative Luker voiced concerns about unintended consequences if the bill is passed as written. Mr. Kane said an amendment to the bill would be acceptable.

MOTION:

Representative Smith moved to send S 1372 to the floor with a Do Pass recommendation.

**SUBSTITUTE
MOTION:**

Representative Luker moved to send S 1372 to General Orders with committee amendments attached. The amending language is being worked on. **Substitute Motion passed by voice vote.** Representative Harwood will carry the bill on the floor.

H 517:

Representative Ruchti and **Representative Labrador** were recognized to explain the bill.

This legislation provides additional protection to the elderly and the disabled under the Idaho Consumer Protection Act. In addition to remedies already available under the Act, the elderly and the disabled may recover from the offending party \$15,000 or triple the actual damages, whichever is greater.

To qualify for this enhanced penalty, the court must find that the offending party knew or should have known its conduct was against an elderly or disabled person and that the conduct caused one of the damages listed in the legislation.

This bill is necessary because the elderly are often targeted with scams or schemes. In order to enforce the Act, a person can go to the Attorney General's office, or pursue other remedies on his/her own.

The bill provides definitions for a disabled person and an elderly person.

MOTION: **Representative Wills moved to send H 517 to the floor with a Do Pass recommendation.**

In answer to a question as to why a dollar amount wasn't used in the bill, the answer was that the drafters looked at the source of income. A lot of these elderly people will not pursue the legal system for help. Representative Ruchti asked to yield to Representative Labrador.

Representative Labrador said at some point the drafters had to create an option for people to hire an attorney. There is nothing in the statute which would prevent these people from obtaining their actual damages.

PRO: Marybeth Connell was recognized to give her testimony.

Ms. Connell said as a senior citizen and a member of AARP, the work of our elected officials to promote the fiscal security of the AARP members is most appreciated. Seniors represent a group whose assets seem ripe for the picking by those targeting that population through financial investment schemes and scams designed to defraud the elderly.

Senior investment fraud was second on a 2005 news release from the Department of Finance ranking in order of prevalence and seriousness. The Idaho Department of Finance estimates that 60% of all complaints received are from seniors.

The financial security and solvency of seniors acts as a magnet for those drawn to the possibility of siphoning off those resources for their use. This bill with its provisions for an enhanced penalty in certain cases of fraud against the elderly and disabled will be one more safeguard in the protection of these individuals.

PRO: Bob Aldridge, attorney, was recognized to give his testimony. Mr. Aldridge said this is an excellent bill. It provides an excellent tool to help protect the elderly and disabled.

SUBSTITUTE MOTION: **Representative Bock moved to send H 517 to General Orders with Committee amendments attached as follows: On page 1 in line 37, delete "source of" and insert "monthly"; in line 42, delete "total of" and insert "monthly and in line 43, delete "was to receive" and insert: "receives".**

Substitute Motion passed by voice vote. Representative Ruchti will carry the bill on the floor.

ADJOURN: Before adjournment, Representative Smith reminded the subcommittee members that there would be a meeting following adjournment of the full committee. There being no further business to come before the committee, the meeting was adjourned at 3:50 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE SMITH SUBCOMMITTEE

DATE: February 19, 2008

TIME: 3:55 P.M.

PLACE: Room 240

MEMBERS: Chairman Smith, Representatives Wills, Bock, Luker, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: Robert Aldridge

Chairman Smith called the meeting to order and said the task before the subcommittee was to review nine bills sponsored by Robert Aldridge. The Chairman asked if the members had reviewed the legislation and, if so, just questions might be in order.

S 1325: The ability of an incapacitated person to nominate a conservator has generally been believed to include the nomination through naming the person as the agent in a financial power of attorney. This bill makes that nomination status clear.

Representative Luker was concerned that there is no definition in the law for a financial power of attorney. He questioned whether this was a durable power of attorney. Mr. Aldridge said there are both financial and medical powers of attorney. Durable power of attorney is one part of the financial power of attorney.

MOTION: **Representative Bock moved to recommend to the full committee that S 1325 be sent to the floor with a Do Pass recommendation. Motion carried by voice vote.**

S 1326: This Act adds new sections to the Idaho Code to provide for receipt and acceptance of foreign guardianship or conservatorship, to provide for transfer of guardianship or conservatorship to a foreign jurisdiction and to provide for temporary recognition of foreign guardianship or conservatorship of developmentally disabled person.

MOTION: **Representative Wills moved to recommend to the full committee that S 1326 be sent to the floor with a Do Pass recommendation. Motion carried by voice vote.**

S 1327: This bill provides that the court visitor and guardian ad litem, as part of their investigation and written reports to the court, determines whether a convicted felon does in fact reside at or frequent the residence of an incapacitated person thereby endangering the incapacitated person.

MOTION: **Representative Bock moved to recommend to the full committee that S 1327 be sent to the floor with a Do Pass recommendation. Motion**

carried by voice vote.

S 1328: This bill deletes confusing language regarding formal testacy proceedings.

MOTION: **Representative Luker moved to recommend to the full committee that S1328 be sent to the floor with a Do Pass recommendation. Motion carried by voice vote.**

S 1331: This bill removes a provision relating to the transfer of an asset in the form of an annuity and provides that, subject to certain exceptions, the transfer of any asset not for fair market value is presumed to be for the purpose of sheltering assets to qualify for medical assistance.

MOTION: **Representative Wills moved to recommend to the full committee that S1331 be sent to the floor with a Do Pass recommendation. Motion carried by voice vote.**

S 1333: This legislation provides certain exceptions to the execution of wills and provides for the execution, making and attesting of self-proved wills.

MOTION: **Representative Luker moved to recommend to the full committee that S1333 be sent to the floor with a Do Pass recommendation. Motion carried by voice vote.**

S 1334: This bill provides that the suspension of power of alienation as to both real and personal property cannot be longer than a period of the lives in being plus 25 years thereafter. It also provides that if a trustee has the power to sell, then the prohibition will not apply. The bill also clarifies that the prohibition does not apply to charities or charitable purposes.

Mr. Aldridge said sections 2, 3 and 4 are new language which address highly specific problems which can arise. Mr. Aldridge pointed to the following example:

If the trust provides that a beneficiary has a limited power of appointment of a portion or all of the trust property and that beneficiary excises that limited power of appointment in such a manner which creates another limited power of appointment and that power is excised, under current law the property subject to the limited power of appointment will be subject to federal estate or gift tax. This often unanticipated tax has been termed the "Delaware Tax Trap."

The provisions of this bill do not apply to charitable trusts.

MOTION: **Representative Bock moved to recommend to the full committee that S1334 be sent to the floor with a Do Pass recommendation. Motion carried by voice vote.**

S 1335: The Uniform Power of Attorney Act provides a simple way for people to deal with their property by providing a power of attorney, which can be used in case of future incapacity or if the principal is unavailable.

Mr. Aldridge said there have been banks and trusts that will not use a

particular power of attorney. This bill creates a statutory form where you can opt in. When asked if existing forms can still be used, Mr. Aldridge replied you can still use existing forms or you can go to the statute and download it.

At this point, Chairman Smith said S 1335 is an extensive act and the following bill, S 1336, is a companion bill to it. Chairman Smith suggested that these two bills be sent to the committee of the whole without recommendation for debate.

There being no objection, **S 1335 and S 1336** will be sent to the full committee for its consideration.

ADJOURN: There being no further business, the meeting was adjourned at 4:45 P.M.

Representative Leon Smith
Subcommittee Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 21, 2008

TIME: 1:32 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representatives McGeachin and Kren

GUESTS: See attached sign-in sheet.

MOTIONS: Chairman Clark called the meeting to order and asked the members to review the minutes.

Representative Bolz moved to accept the minutes of the full committee meeting held on February 19, 2008. Motion carried by voice vote.

Representative Smith moved to accept the minutes of the subcommittee meeting held on February 19, 2008, as written. Motion carried by voice vote.

H 456: Chairman Clark recognized **Bill von Tagen** from the Attorney General's office to explain the bill.

This legislation eliminates discrepancies between Idaho's extradition procedures and those of other states. Idaho's current extradition statutes originated from the 1927 Uniform Criminal Extradition Act, whereas the majority of states utilize the Uniform Criminal Extradition Act passed in 1936. The National Association of Extradition Officials recommends and endorses the 1936 Act.

This legislation improves the efficiency of the extradition process and allows the state of Idaho to more greatly facilitate the process of interstate extradition. Section 9 of the bill on page 4 spells out the rights of the accused, including the right of habeas corpus.

Page 10 of the bill reflects some language which has been adopted from the state of Missouri. This allows the governor to enter into executive agreements.

MOTION: **Representative Wills moved to send H 456 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Labrador will carry the bill on the floor.

S 1319: The Chairman recognized **Director Callicutt**, Department of Juvenile Corrections, to explain.

The purpose of this legislation is to make it clear that sexual contact between any person, including juveniles, in the custody of a correctional facility in Idaho, including juvenile facilities and any employee of a governmental or private agency having such custody is a felony.

Also, sexual contact between any person on felony parole or felony probation and any employee of the Idaho Department of Correction who supervises such persons is a felony.

The only exceptions are if the persons involved are married.

PRO: **Paul Panther**, Idaho Department of Correction, was recognized to give his testimony.

Mr. Panther said this bill addresses the issue of juvenile offenders and narrows the scope of application.

CON: **Fairy Hitchcock** was recognized to give her testimony.

Ms. Hitchcock said that unless the victims have the opportunity to actually report the offense, the bill will not be effective. Right now there is no means of making this report in a confidential manner. Some language needs to be added to the bill to make these actions reportable.

MOTION: **Representative Smith moved to send S 1319 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Wills will carry the bill on the floor.

H 501: The Chairman recognized **Representative Ringo** to speak to the bill. This legislation is designed to protect victims of domestic violence.

Representative Trail was recognized to give his testimony. This legislation is modeled after Washington state legislation. Amendments have been incorporated into the language of the bill.

The Attorney General's office suggested some technical changes which have been incorporated. The Secretary of State feels this is good public policy.

PRO: **Professor Brandt** was recognized to explain the bill in more detail.

This bill relates to address confidentiality for victims of violence. It provides a procedure for an address confidentiality program and provides penalty provisions relating to falsely attested applications.

It provides for the use of designated addresses and prohibits the disclosure of records. It provides definitions for "address" and "program participant." It lists the records exempt from disclosure.

It provides exceptions to the victim's records for a law enforcement agency or, if directed by the court, to a person identified in the order.

These victims need to provide a mailing address to the Secretary of State. The Secretary of State then certifies that the victim is entitled to protection

for 4 years. It provides for the Secretary of State to forward all first class mail to the participant.

All this bill does is it provides for address confidentiality of public records. The drafters worked hard to ensure that people cannot use this program as a shield.

PRO: **Francis Halstead** was recognized. Ms. Halstead said she was a victim of domestic violence 20 some years ago. She gave each member a handout (attachment.) This bill can help victims avoid what Ms. Halstead went through. Ms. Halstead said she could not own anything in order to protect her address.

It was a pilot program that she was in. She was moved from one home to another home in another state. She was not allowed to contact her family directly.

PRO: **Carl Holquist** was recognized to give his testimony. Mr. Holquist said 250 people applied for this protection in a year. Professional trainers go around and hold training sessions regarding address confidentiality. Companies, such as utility companies, are invited to attend this training. This program has really been thought out. Victims need this statute to protect them. The domestic council in the state is well staffed and well maintained.

CLOSING REMARKS: Representative Ringo said this is a simple process. There are similar statutes in 22 states. The drafters realize that this does not give complete protection. It doesn't answer all the questions, but it is a start to help protect these victims.

MOTION: **Representative Wills moved to send H 501 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representatives Ringo and Trail will carry the bill on the floor.

S 1320: **Paul Panther**, deputy attorney general, Department of Correction, was recognized.

Mr. Panther said this is a housekeeping measure. This amendment clarifies that the Idaho Department of Correction's financial responsibility for prisoner health care extends only to prisoners committed to the Department's custody.

MOTION: **Representative Smith moved to send S 1320 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Smith will carry the bill on the floor.

H 382: **Representative Hart** was recognized to speak to the bill.

Representative Hart handed each member a copy of proposed amendments to H 382. The difficulty with the language of the bill in clarifying the premises to which sex offender access is prohibited was in determining what was school property. Also, there was a problem with providing adequate notice to the sex offender regarding school property.

The amendment reads as follows: in line 17, following “present” insert: “and are involved in a school activity or when children are present within thirty (30) minutes before or after a scheduled school activity”. In line 20, following “properties” insert “posted with a notice that they are” and in line 21, following “present” insert: “and are involved in a school activity or when children are present within thirty (30) minutes before or after a scheduled school activity.”

In line 22, delete “,leased or contracted” and insert: “or leased”. In line 27, delete “offender’s property line” and insert: “nearest point of the exterior wall of the offender’s dwelling unit”.

A new subsection (e) was added as follows:

(e) The posted notices required in this subsection (1) shall be at least one hundred (100) square inches, shall make reference to section 18-8329, Idaho Code, shall include the term “registered sex offender” and shall be placed at commonly used entrances to the property. In addition, there shall be at least one (1) notice posted every six hundred sixty (660) feet along the property line.”

On page 2, in line 7, following “grounds” delete “.” and insert “; or” and after line 7, insert the following:

“(h) Has written permission from a school principal, vice-principal, or the equivalent, to be on the school grounds or upon other property posted with a notice that the property is used by a school.”.

Chairman Clark said this bill will be back before the committee next year and every following year because there will always be questions which need to be answered.

MOTION: **Representative LeFavour moved to send H 382 to General Orders with committee amendments attached. Motion carried by voice vote.**
Representative Clark will carry the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:00 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 25, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representatives Kren, Wills and Ruchti

GUESTS: See attached sign-in sheet

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on February 21, 2008, as written. Motion carried by voice vote.

**REPORT FROM
SMITH SUB-
COMMITTEE:** **Subcommittee Chairman Leon Smith** said the Subcommittee reviewed nine bills sponsored by Robert Aldridge on Tuesday, February 19, 2008.

Of those nine bills, the **Subcommittee recommended to the full Committee that S 1325, S 1326, S 1327, S 1328, S 1331, S 1333 and S 1334 be sent to the floor with a Do Pass recommendation.**

Regarding **S 1335 and S 1336, the Subcommittee returns those bills to the full Committee without recommendation for consideration.**

The full Committee accepted the recommendations of the Subcommittee and Chairman Clark asked Representative Smith to assign the seven bills to sponsors to be carried on the floor of the House.

H 540 and H 541: The Chairman recognized **Heather Reilly**, Idaho Prosecuting Attorneys Association, to explain the bills.

Ms. Reilly said **H 540** and **H 541** are really companion bills. The purpose of these two pieces of legislation is to create more significant penalties for offenders who repeatedly violate a valid order of no contact or a protection order. It was Ms. Reilly's original intention that these 2 pieces of legislation would be printed as one bill.

Currently, a person may only be charged with a misdemeanor for contacting a victim in violation of either of these orders, no matter how many times the order is violated. More significant penalties for repeated violations are needed in order to better protect victims of violent offenses, such as domestic battery.

These bills will create an enhanced misdemeanor with a discretionary penalty of up to 2 years in jail and/or \$2,000 for a second violation of a no

contact order or protection order or a combination within 10 years. Further, a felony may be charged if an offender violates a no contact order or protection order or a combination for a third time within 15 years.

A no contact order may be issued by a court when a defendant has been charged with or convicted of assault, battery, aggravated assault, aggravated battery, domestic battery, sexual abuse of a minor, lewd conduct, as well as other serious crimes.

A protection order may be issued by a court upon a showing that there is an immediate and present danger of domestic violence.

It is not uncommon for an offender to systematically and repeatedly make contact with a victim in order to attempt to influence that victim regarding a court proceeding and/or continue a pattern of dominance and control.

In answer to a Committee question regarding data on the number of violations that have occurred, Ms. Reilly asked to yield to **Ben Harmer**, Chief Deputy with the Ada County Prosecutors' office. The number of charges of violation of no contact orders in 2006 was 81 and there were 104 in 2007. The number of charges of violation of protection orders during the year 2006 was 14 and there were 12 in 2007. In 2007, it appears that approximately 4 defendants have repeatedly violated orders.

Mr. Harmer said giving the same penalty to repeat offenders does not present a strong deterrent. An increased penalty is needed. There can be provisions made to set a time where a person can ask for exceptions to these orders. These orders are civil in nature. The defendant is allowed to meet with the judge to obtain exemptions.

CON: **Fairy Hitchcock** was recognized to give her testimony. Ms. Hitchcock said she was testifying against both of the bills as they were written. Ms. Hitchcock cited her own personal experiences as the reason she testified against the no contact order. Ms. Hitchcock said the way the legislation was written, she could be convicted of a felony. She felt the legislation would catch innocent people.

CON: **Diane Anderson** was recognized to give her testimony. Ms. Anderson said she was assaulted over the past three years by her husband and she was the one who was charged with a crime. Ms. Anderson spoke against the no contact order. Ms. Anderson said she has tried to obtain a modification to the no contact order against her. It is very difficult to get something done. The no contact order has been devastating on her and on her children.

MOTION: Representative LeFavour **moved to send both H 540 and H 541 to General Orders with Committee amendments attached, changing within "10 years" to "within 5 years" in each bill, and changing "15 years" to "10 years"**. In support of her motion, Representative LeFavour said she was a victim of stalking during the last two years. She said the person stalked her at public events, emailed her and impersonated her. These stalkers try to torture their victims. It becomes an obsession.

SUBSTITUTE **Representative Labrador moved to hold H 540 in Committee saying**

MOTION: this was a very difficult issue to deal with.

Representative Labrador moved to send H 541 to General Orders with Committee amendments attached, removing all language on page 1 of the bill, lines 25 through line 33 which speaks to a second offense, deleting in line 35 “or section 39-6312, Idaho Code,” and changing in line 38, the reference to “fifteen (15) years” to “five (5) years”.

AMENDED SUBSTITUTE MOTION: **Representative Luker** moved to hold H 540 and H 541 in Committee. In support of his motion, Representative Luker said it hasn’t been shown that judges are using the authority they have to impose penalties. The language of both bills needs more study.

Chairman Clark said if you look at all three motions, they are speaking to both bills. It would appear that there is nothing wrong with ruling on both bills at one time.

ROLL CALL VOTE: Roll Call Vote was called for on the Amended Substitute Motion to hold both bills in Committee. **Voting AYE: Representatives Harwood, Nielsen, McGeachin, Hart, Luker and Clark. Voting NAY: Representatives Smith, Shirley, Bolz, Labrador, Boe, LeFavour and Bock. Totals: 6-7-3. Motion failed.**

SUBSTITUTE MOTION: **The Substitute Motion was to hold H 540 in Committee and send H 541 to General Orders with Committee amendments attached. Motion passed by voice vote.** Representative Labrador will carry the bill and the amendments on the floor.

S 1318a: The Chairman recognized **Brent Reinke** to explain the bill.

These changes adjust the compensation received by the Board of Correction. The Board has oversight and policy-making responsibilities over the state’s second largest agency. The Board’s current compensation is \$50 a day.

The Board’s compensation was set when Idaho Code, Section 20-208, was amended in 1969 to provide for a daily salary of \$50, plus expenses. Therefore, the Board’s compensation has apparently remained unchanged for the past 38 years.

The amended bill provides for a daily salary of \$100, plus expenses. The fiscal impact on the bill needs to be corrected to reflect this change.

PRO: **Paul Panther** was recognized to speak to the bill. Mr. Panther said there are really three sections to the legislation. The first deals with persons who serve without compensation. The second is where people are eligible for PERSI and the third section deals with honorarium.

MOTION: **Representative Smith** moved to send S 1318a, with a corrected fiscal impact, to the floor with a Do Pass recommendation. **Motion carried by voice vote.** Representative Smith will carry the bill on the floor. Representatives Boe and Neilsen asked to be recorded as voting “No” on the motion.

- S 1339a:** The Chairman recognized **Michael Kane**, Idaho Sheriffs Association, to explain.
- This is a trailer bill to the bill already sent to the floor with a do pass recommendation. It authorizes a sentencing court to order a person found guilty of misuse of public funds to make restitution to a public entity or its insurer and authorizes the court, in its discretion, to order the person to use his or her retirement funds to make restitution, unless other funds are available.
- MOTION:** **Representative McGeachin moved to send S 1339a to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative McGeachin will carry the bill on the floor.
- S 1357:** Chairman Clark recognized **Heather Reilly** to explain.
- Ms. Reilly said this legislation is intended to clarify Idaho's "identity theft" criminal statute. This is a very simple change that merely removes the phrase "in the name of the other person".
- The state must still prove beyond a reasonable doubt that a person obtained or recorded personal identifying information of another without authorization and with the intent that the information be used to obtain, or attempt to obtain credit, money, goods or services without consent. The legislation removes a potential loophole in Idaho's Identity Theft law.
- MOTION:** **Representative Nielsen moved to send S 1357 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Nielsen will carry the bill on the floor.
- ADJOURN:** The Chairman said there would not be a meeting on Friday, February 29, 2008. There being no further business to come before the Committee, the meeting was adjourned at 3:30 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 27, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representative LeFavour

GUESTS: Dir. Reinke and Dr. Mary Perrien, Department of Correction; Joel Teuber, Fraternal Order of Police; Heather Reilly, Idaho Prosecuting Attorneys Assn.; Bill von Tagen, Attorney General's office

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on February 25, 2008, as written. Motion carried by voice vote.

**PRESENTATION
ON SECURE
MENTAL
HEALTH
FACILITY:** Chairman Clark recognized **Director Brent Reinke** to open the presentation. The Director said there has been some confusion regarding a secure mental health facility. The Director gave the members two handouts (attachments) regarding the facility. The Department has come before the Committee to make sure all questions concerning the facility are answered. The Director asked to yield to **Dr. Mary Perrien**, Chief, Division of Education and Treatment.

Dr. Perrien explained the briefing sheet and the fact that the Department of Correction and the Department of Health and Welfare are asking the Legislature for a 300 bed secure mental health facility. Currently acutely mentally ill inmate-patients are housed in the maximum-security prison.

But prisons are not designed to create an environment that fosters healing. They were designed for containment, not treatment. They can serve as incubators for mental illness, turning serious disorders into full scale psychiatric breakdowns. Without a continuum of care in the community, people who could have functioned as productive citizens face a real risk of ending up in custody.

The members attention was directed to the first flow sheet which shows the pathways to admission to the secure mental health facility for criminal patients and the second which shows admission for civil commitment patients.

The idea is to maintain the functional level of people in the least restrictive environment possible. In answer to a question about how many civil commitment patients there are, the answer was none at this time. The Chairman pointed out that there would be 40 beds assigned for Health

and Welfare patients. These beds are the result of an estimate from the Department of Health and Welfare on its annual needs.

In answer to a Committee question, these Health and Welfare patients will be treated differently. They will have care provided strictly by Health and Welfare.

The threshold of who gets admitted to this facility is very high. The site for the facility has not yet been determined. There will be functional areas of care. Funding the facility is critical. The Governor recommends spending one time dollars to build the facility. It's an investment that will help ease the suffering of Idaho's mentally ill for generations to come.

There are currently 36 men in the Department's acute care facility. When asked if there was really a need for all 300 beds at this time, the answer was there is an immediate need for the 260 beds and 300 beds could be filled if that many were available.

Dr. Perrien said it would probably take three years to build the facility after the funding is approved.

PRO:

Kathleen Allyn, Idaho Department of Health and Welfare, was recognized. Ms. Allyn said there is currently no secure mental health facility. The Department is looking at converting a 20 bed building to take care of patients needing acute care. It would be the Department's plan to use this building temporarily as an interim secure facility.

This facility would not be a truly secure facility. The building would later be used as a psychiatric or step-down facility. There would certainly always be a need for it.

The temporary facility would include locked exterior doors, as well as locks on the patients' doors. Also, there would be extra staffing. The difference between the temporary facility and the permanent facility which is being proposed is that the permanent facility will be a separate unit with a single access and a security fence around the building providing much more security for the patients.

S 1362:

The Chairman thanked the Director and Dr. Perrien for the question and answer session on the secure mental health facility and recognized **Joel Teuber** and **Heather Reilly** to explain S 1362. A handout was provided showing the support of the Law Enforcement Legislative Council (attachment.)

Prior to 2001, a person who assaulted or battered a judge, correctional officer, jailer, teacher at a detention facility, juvenile probation officers and others was only guilty of a felony if the attack occurred while the official was on duty. Police officers were not included among those protected officials.

In 2001, language was added to the state to protect these officials when they were off duty or retired if the attack was done out of revenge and to protect police officers in similar cases but with a higher standard in order to be charged as a felony.

Unfortunately, the placement of additional language in the statute resulted in an unintended consequence of requiring the state to prove a specific intent in all cases of assault or battery upon these officials.

This bill clarifies the language so that it matches the intent. On page 2, line 2 of the bill, the words “former or present” were added to clarify that judges, police officers, teachers at detention facilities, etc., who were retired or had left employment, would still be protected against revenge attacks.

This legislation will provide protection for those individuals who work every day in order to protect the citizens of Idaho from crime and are, therefore, themselves targets of violent crime. There is still discretion built into this statute. The bill is simply trying to clarify existing law.

MOTION: **Representative Boe moved to send S 1362 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Boe will carry the bill on the floor.

S 1370: The Chairman recognized **Bill von Tagen**, Deputy Attorney General, to explain.

The purpose of this bill is to prevent and prohibit adults from exposing children to sexual conduct with the intent or effect of desensitizing or grooming children for sexually exploitive activity. The bill was drafted to address the conduct of an adult who performed a sexual act photographed by a child for the sexual arousal or gratification of the adult. The Idaho Court of Appeals determined this type of conduct is not currently prohibited under Idaho Code section 18-1506 because there was no solicitation.

The legislation is necessary to ensure that the conduct identified and defined by the amendment is punishable as a felony. By making this type of conduct a felony, perpetrators will be more deterred from committing the action and suffer greater punishment and society will provide greater protection to a vulnerable class of potential victims.

MOTION: **Representative Smith moved to send S 1370 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: **Representative Labrador moved to send S 1370 to General Order with Committee amendments attached deleting on line 31 after “genitals” the comma and inserting the word “or” and deleting the words “or buttocks”.** In support of his motion Representative Labrador said including buttocks in the definition of “sexual conduct” could cause an action to be brought against an innocent person.

Substitute Motion passed by voice vote. Representative Smith will carry the bill on the floor and Representatives Labrador and Ruchti will carry the amendment.

S 1371: The Chairman recognized **Bill von Tagen** to explain.

This bill expands the nature and scope of Idaho's restitution statute to include economic loss suffered in an injury accident where one of the parties involved in that accident leaves the scene of the accident in violation of the duties set forth in Idaho Code, section 18-8007.

The legislation would have a positive effect on the Crime Victims Compensation Program administered by the Idaho Industrial Commission.

MOTION: **Representative Labrador moved to send S 1371 to the floor with a Do Pass recommendation. Motion carried by voice vote.**
Representative Bolz will carry the bill on the floor.

ADJOURN: Chairman Clark reiterated that there would be no meeting on Friday, February 29, 2008. There being no further business to come before the Committee, the meeting was adjourned at 3:15 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 3, 2008

TIME: 2:10 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See attached sign-in sheet

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bolz moved to accept the minutes of the meeting held on February 27, 2008, as written. Motion carried by voice vote.

H 576: The first item on the agenda was H 576 and Chairman Clark asked for **unanimous consent to hold the bill for a time certain until Tuesday, March 11, 2008**, in order for the sponsors to discuss a technical amendment to the bill. There being no objection the bill was so held.

H 587: Chairman Clark recognized **Patricia Tobias**, Administrative Director of the Courts to explain the bill.

Ms. Tobias gave each member a handout showing the western states and national average salaries of Supreme Court justices and district judges (attachment.)

This bill would change the annual salary of justices of the supreme court, judges of the court of appeals, district judges and attorney magistrate judges beginning July 1, 2008. The annual salaries of the justices and judges would be increased by three percent (3%).

In response to a question regarding the salaries of magistrate judges, Ms. Tobias said those salaries were covered in line 18 of the bill. In response to a question regarding why the additional language in the bill was necessary, Ms. Tobias said it has been her experience that the Legislature has its own ideas about how to best write the language contained in bills. When leadership was asked about the language, this version was chosen.

MOTION: **Representative Wills moved to send H 587 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Clark will carry the bill on the floor.

S 1350: The Chairman recognized **Rex Blackburn**, Uniform Law Commissioner, to explain the legislation. Mr. Blackburn said the purpose of the Idaho

Uniform Limited Liability Company Act (IULLCA) is to provide Idaho with modern, updated legislation governing the formation and operation of limited liability companies (LLCs.)

An LLC is a single business entity which provides limited liability protection for its members, as well as providing all the owners of the business with federal partnership taxation. This Act will replace, but retain the essential characteristics of, the existing Idaho Limited Liability Company Act.

The IULLCA was adopted by the National Conference of Commissioners on Uniform State Laws in 2006, and is endorsed by the American Bar Association Real Property, Probate and Trust Law Sections.

The Act is going through a review in a number of other states. Many of the current provisions have not been changed. This Act creates clarity and helps members understand the provisions. A number of technical changes have been made.

People can choose to operate under the current Act until July 2010. However, there are a number of improvements in the new Act. It will help facilitate business. It has been drafted with the average LLC in mind.

PRO: The Chairman recognized **David Jensen**, attorney, to testify.

Mr. Jensen said he was the chairman of the committee that looked at this Act. There were about 20 Idaho attorneys involved and there was an active group of about 10 members. The committee met every two weeks for several hours. That group included Dale Higer and Rex Blackburn, Uniform Law Commissioners.

All changes were done on a consensus basis. The committee looked at the uniform laws of other states. Much consideration went into drafting this Act. Adjustments were made which were appropriate for the state of Idaho. The result is a more complete and thorough Act.

In response to a question regarding the apparent lack of a severability provision, Mr. Jensen said one could easily be added next year if it was deemed to be important.

PRO: The Chairman recognized **Chuck Goodenough**, Deputy Secretary of State, to testify.

Mr. Goodenough said operating agreements can be oral or in writing, or both. There are 49,000 LLCs currently. These LLCs can continue operating the way they have if they so choose. This is a good uniform act. It is entirely flexible and it will facilitate commerce.

MOTION: **Representative Labrador moved to send S 1350 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: **Representative Nielsen moved to hold S 1350 in Committee.** In support of his motion, Representative Nielsen said severability should be spelled out and this Act should circulate in the community for one more

year.

Representative Bock spoke in support of the original motion saying this Act is much superior to the current Act. Representative Kren spoke in favor of the substitute motion saying he wasn't sure the new Act was needed and he expressed concern regarding business owners.

Representatives Smith, LeFavour and Ruchti spoke in favor of the original motion.

**ROLL CALL
VOTE:**

The substitute motion was to hold S 1350 in Committee. Voting AYE: Representatives Harwood, Nielsen, McGeachin, Hart, Luker, Kren. Voting NAY: Representatives Clark, Smith, Shirley, Wills, Labrador, Boe, LeFavour, Ruchti, Bock. Totals 6-9-1. Substitute motion failed.

**ORIGINAL
MOTION:**

The original motion was to send S 1350 to the floor with a Do Pass recommendation. Motion passed by voice vote. Representatives Kren, Nielsen, McGeachin, Hart and Harwood asked to be recorded as voting "No" on the motion. Representative Labrador will carry the bill on the floor. The Chairman said in the future this type of legislation will be started in the House rather than in the Senate. This will give the members more time to study the language.

S 1356:

The Chairman recognized **Michael Kane** to explain.

This bill was returned to the Committee because a part of the language relating to a felon not being able to run for the office of sheriff was found to be unconstitutional. Mr. Kane requested that the language in the bill on line 12: "and is not a convicted felon" be deleted.

MOTION:

Representative LeFavour moved to send S 1356 to General Orders with Committee amendments attached. Motion carried by voice vote. Representative LeFavour will carry the bill on the floor, and Representatives LeFavour and Hart will carry the amendments.

S 1430:

The Chairman recognized **Michael Kane** to explain.

The purpose of this bill is to allow police agencies to confiscate computer devices and digital media used in the commission of a felony, after a hearing before the district court. This will allow police agencies to use the equipment for legitimate police purposes and to analyze the equipment in order to better fight cyber-crime.

Mr. Kane pointed out that at the confiscation hearing any person who has filed a timely claim may show by competent evidence that the property in question was not used to commit a felony, or that the owner is innocent. The court may then return the property to the owner or interested person.

MOTION:

Representative Shirley moved to send S 1430 to the floor with a Do Pass recommendation. After further discussion by the Committee, Roll Call Vote on the motion was called.

ROLL CALL

Voting AYE: Representatives Smith, Shirley, Wills, Ruchti, Bock and

VOTE: **Clark. Voting NAY: Representatives Harwood, Nielsen, McGeachin, Hart, Labrador, Luker, Kren, Boe and LeFavour. Motion failed 6-9-1.**

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 4:05 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 5, 2008

TIME: 1:30 P.M.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None.

GUESTS: Robert Aldridge

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Harwood moved to approve the minutes of the meeting held on March 3, 2008, as written. Motion carried by voice vote.

S 1324a: The Chairman recognized **Robert Aldridge** to explain the legislation.

This bill establishes a form of ownership of real property. The bill creates the right of married persons to title their real estate as community property with right of survivorship. At the first death, the property transfers automatically to the surviving spouse, without any court proceedings.

Section 15-6-401 describes the method of creating the ownership and Section 15-6-402 allows either spouse to terminate the right of survivorship by recording an affidavit. This might happen for any number of reasons including estate planning changes. The termination does not change the community ownership of the property.

The bill will allow married couples to effectively and efficiently pass their estates at first death without any formal court proceedings. Non real estate assets, such as bank accounts, owned in both names, already allow such passage at first death. The bill simply extends that convenience to real estate.

Representative Bock spoke in favor of the bill.

MOTION: **Representative Nielsen moved to send S 1324a to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Smith will carry the bill on the floor.

S 1383: Acting Chairman Smith recognized **Robert Aldridge** to explain the legislation.

Mr. Aldridge said this bill concerns guardianships and conservatorships of minors. It provides protection for vulnerable minors who may otherwise

be in danger from convicted felons. The bill does not cover conservatorships, since the minor does not reside with the conservator unless the conservator is also the guardian, or the guardian picks the residence of the conservator to be the residence of the minor.

Idaho law currently provides that a convicted felon should not be appointed guardian of an adult incapacitated person unless the court finds that such appointment is in the best interests of the incapacitated person. A companion bill extends that provision to provide that a convicted felon cannot reside at the residence of the proposed guardian or frequent that residence and thereby endanger the incapacitated person unless the court finds that the appointment of the guardian is still in the best interests of the incapacitated person.

This bill provides the same protections to the appointment of the guardian of a minor. It will help protect minors which is the primary objective of the bill.

A committee member said the court already has the mandate to rule in the best interests of the minor. This bill might have unintended consequences. In response, Mr. Aldridge said this will give guidance to the court. This keeps the statutes parallel. Another member expressed concern regarding the term "clear and convincing evidence."

MOTION: **Representative LeFavour moved to send S 1383 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: **Representative McGeachin moved to hold S 1383 in committee.** Representative Luker spoke in favor of the substitute motion saying this is a broad net being cast here.

ROLL CALL VOTE: **Roll Call Vote was requested on the substitute motion to hold S 1383 in committee. Voting AYE: Representatives Smith, Harwood, Nielsen, Shirley, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe Ruchti and Bock. Voting NAY: Representative LeFavour. Motion passed: 13-1-2.**

S 1419: The Chairman recognized **Robert Aldridge.**

The allowances in the Idaho Probate Code for surviving spouses and children (especially adult children) have caused endless problems in interpretation and implementation. Additionally, such allowances have created problems because of the Deficit Reduction Act changes to Medicaid and also interpretations of existing rules and statutes by Idaho Medicaid estate recovery.

This bill, done in consultation with Medicaid Estate Recovery as to Medicaid issues, restructures the allowances to meet their original intent.

The existing family allowance is deleted since it was based on probate being a process that locked up all assets, therefore requiring a temporary monthly or lump sum payment to the spouse or minor or disabled children to sustain them during the probate. This is simply no longer applicable.

The bill sets a straight forward \$50,000 homestead amount, not dependent on whether the surviving spouse or minor or disabled children owned a homestead. This will protect the one-half of the homestead in the estate. It also removes complicated language from the existing law on when the allowance would or would not be payable.

The bill also allows the decedent to limit or eliminate the ability of a surviving spouse, but not minor or dependent children, to claim the allowance. The bill will not have any current fiscal effect on Medicaid estate recovery, since Idaho Medicaid estate recovery currently claims the right to make a contingent claim in the estate of the community spouse if the institutionalized spouse is still alive and receiving Medicaid benefits.

The bill also greatly simplifies the exempt property allowance by limiting it to only tangible personal property of certain types and eliminating any cash equivalent. It will clarify and simplify the interaction between Medicaid estate recovery and the exempt property provisions. It also gives freedom of choice to decedents on how their estates will pass.

- MOTION:** **Representative Wills moved to send S 1419 to the floor with a Do Pass recommendation.**
- SUBSTITUTE MOTION:** **Representative Luker moved to hold S 1419 in committee for a time certain at the discretion of the Chair which would be Thursday, March 13, 2008.** In support of his motion, Representative Luker said he would like more time to study the bill.
- ROLL CALL VOTE:** **Roll Call Vote was requested on the Substitute Motion to hold S 1419 for a time certain until Thursday, March 13, 2008. Voting AYE: Representatives Harwood, Nielsen, McGeachin, Hart and Luker. Voting NAY: Representatives Shirley, Wills, Bolz, Labrador, Kren, Boe, LeFavour, Ruchti, Bock and Clark. Motion failed 5-10-1.**
- ORIGINAL MOTION:** **The Original Motion was to send S 1419 to the floor with a Do Pass. Motion carried by voice vote.** Representative Wills will carry the bill on the floor.
- ADJOURN:** Chairman Clark said the Committee will not meet on Friday, March 7, 2008. There being no further business to come before the Committee, the meeting was adjourned at 2:50 P.M.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 11, 2008

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See attached sign-in sheet

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on March 5, 2008, as written. Motion carried by voice vote.

S 1431a: The Chairman recognized Representative Killen to explain the legislation.

Representative Killen said this is a disclosure bill. It applies only to residential property. It almost always deals with non judicial foreclosures. It provides that all contracts entered into while a residential home is in the foreclosure process must be in writing and that consumers have a five day right of rescission. Exclusions have been added. It does not apply to individuals or entities that are clearly regulated by the state of Idaho.

Representative Killen asked to yield to deputy attorney general Brett DeLange. Mr. DeLange said generally consumers protect themselves well. The legislature has recognized in the past where certain disclosures need to be made. The consumer must have adequate time and information to make these decisions. This legislation is designed to help consumers protect themselves.

The members were given a handout (attachment) showing Idaho Foreclosure Statistics and the number of defaults in Ada County from January 2007 through January 2008. In response as to why mortgage foreclosure is used instead of deed of trust in the bill, Mr. DeLange said consumers think in terms of mortgage foreclosure rather than deed of trust.

MOTION: Representative Wills moved to send S 1431a to the floor with a Do Pass recommendation. Speaking against the motion, Representative Ruchti said written notice is essential in the law and should be required in the bill.

Speaking to the amendments, Representative Killen said they basically take language out to avoid ambiguities.

SUBSTITUTE MOTION:	Representative Ruchti moved to send S 1431a to General Orders with committee amendments attached which would be to insert language saying written notice required by Idaho law in the bill.
AMENDED SUBSTITUTE MOTION:	Representative Nielsen moved to hold S 1431a for a time certain until the meeting on Thursday, March 13, 2008.
ROLL CALL VOTE:	Roll Call Vote was requested on the amended substitute motion to hold the bill for a time certain until March 13, 2008. Voting AYE: Representatives Harwood, Nielsen, McGeachin, Hart, Luker, Kren, Ruchti. Voting NAY: Representatives Smith, Shirley, Wills, Bolz, Labrador, Boe, Bock and Clark. Motion failed 7-8-1.
ROLL CALL VOTE:	Roll Call Vote was requested on the substitute motion to send the bill to general orders with committee amendments attached. Voting AYE: Representatives Smith, Harwood, Nielsen, McGeachin, Hart, Luker and Ruchti. Voting NAY: Representatives Shirley, Wills, Bolz, Labrador, Kren, Boe, LeFavour, Bock and Clark. Motion failed 7-9-0.
ORIGINAL MOTION:	The original motion to send S 1431a to the floor with a Do Pass recommendation passed by voice vote. Representative Killen will carry the bill on the floor.
H 576:	<p>Representative Vander Woude was recognized to explain the bill. This legislation would make a criminal background check a part of the application for a petitioner's change of name. This background check would be dated within 30 days of the date of filing the petition for a change of name.</p> <p>Representative Vander Woude said he is a dairy farmer and not a lawyer, so he asked to yield to Patricia Tobias, administrative director of the Courts, to answer any questions the committee might have.</p> <p>Ms. Tobias said Dawn Peck with the Idaho State Police is currently out of town, but the Courts will work closely with her to see if a person might do this by mail or how the information would be obtained. In response to a question as to whether the criminal background check would become part of a public record, Ms. Tobias said it would most likely be an open record. However, the Court would make the final determination.</p> <p>In response to a question saying this bill does not say what the Court would do with this background check information, Ms. Tobias said there are other provisions in the code which would give the judge directions to consider this information and any other information that would be deemed important. The bill was drafted to make sure there are no illegals coming in and trying to change their names.</p> <p>A member pointed out that the law in Idaho is that you can use any name you want unless you want to defraud someone. It seems that we are adding a layer of bureaucracy and this isn't necessary unless the Court orders a background check.</p>

MOTION: Representative Bock moved to hold H 576 in Committee. Motion carried by voice vote. Representative Kren asked to be recorded as voting "No" on the motion.

S 1335: Robert Aldridge was recognized to explain the bill.

Before addressing the bill, Mr. Aldridge said recent years have seen a huge increase in the use of financial powers of attorney. In addition, as the Idaho Pilot Project has increased monitoring of conservatorships in Idaho, financial abuse, especially of the elderly, has often shifted to use of a financial power of attorney. Idaho's current statute is simply too short and does not provide adequate safeguards for grantors of financial powers.

The Uniform Power of Attorney Act provides a simple way for people to deal with their property by providing a power of attorney, which can be used in case of future incapacity or if the principal is unavailable. While chiefly a set of default rules, the act also contains safeguards for the protection of the principal. Mr. Aldridge gave the members several letters in support of the bill including a letter from Dale Higer, Chairman of the Commission on Uniform State Laws (attachments.)

The bill makes only a few changes to the Uniform Act which was last amended in 1987.

The Act was amended to incorporate well-written statutes on renunciations and disclaimers. The Act was modified slightly to better grant flexibility in gifting techniques. The statutory form was modified to include existing Idaho law on the methods of signing and notarizing a power when the grantor of the power is either illiterate or physically unable to sign.

This bill will greatly enhance the ability to use financial powers of attorney in Idaho, while still giving protections to the grantor of the power and clarity in the use of the power. The statutory form is very flexible and can be tailored to each person's specific needs.

PRO: Sarah Scott, Idaho Commission on Aging, was recognized to speak to the bill.

Ms. Scott said this bill is necessary to provide appropriate protection to Idaho's vulnerable adults. The provisions of the Act apply to all powers of attorney, thus protecting unsophisticated principals by holding agents to its standards even when not contained within the power of attorney document.

The primary purpose of the judicial relief section is to protect vulnerable or incapacitated principals against financial abuse. The agent's liability section provides for damages and attorney's fees and costs. The Act's remedies aren't exclusive and don't abrogate any other state law.

The Act clarifies who qualifies to benefit from payments for personal and family maintenance. It provides limitations on an agent's authority to make a gift of the principal's property.

The bill will help prevent exploitation of vulnerable adults by the unjust or improper use of his or her financial power of attorney. It will help law enforcement, prosecutors and judges determine whether an agent's use of a financial power of attorney is unjust or improper. And the bill will help prevent vulnerable adults from unnecessarily enrolling in Medicaid services.

MOTION: Representative LeFavour moved to send S 1335 to the floor with a Do Pass recommendation.

ROLL CALL VOTE: Roll Call Vote was requested. Voting AYE: Representatives Harwood, Nielsen, Hart, Bolz, Labrador, Kren, Boe, LeFavour and Bock. Voting NAY: Representatives McGeachin, Luker, Ruchti, Clark. Motion passed 9-4-3. Representative LeFavour will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:03 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 13, 2008

TIME: 3:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representatives Clark and Wills

GUESTS: See attached sign-in sheet

MOTION: Chairman Smith called the meeting to order and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on March 11, 2008, as written. Motion carried by voice vote.

S 1420a: The first item on the agenda was S 1420a and Adrean Casper with the American Heart Association was recognized to explain the bill.

Ms. Casper said this bill ensures that any responder, regardless of training, is protected from civil liability when using an automated external defibrillator. Also, the bill assures protection of owners if such person or entity complies with the maintenance requirements set forth in the legislation.

Ms. Casper said when a similar bill was passed in a neighboring state, there were 8 lives saved. The state of Alaska reports a 40% survival rate. The current statute requires a person to be a trained responder. With this legislation, that is no longer a requirement.

In crafting the legislation the American Heart Association worked hand in hand with the Trial Lawyers Association on the language and section (d) was added as a result of working closely with the trial lawyers.

These are semi automatic defibrillators.

MOTION: Representative Harwood moved to send S 1420a to the floor with a Do Pass recommendation.

In answer to a question, Barbara Jorden with the Trial Lawyers Association said the lawyers preferred the word "reasonable" in the bill rather than "in good faith".

Motion carried by voice vote. Representative Mortimer will carry the bill on the floor.

S 1422a: Heather Reilly, Idaho Prosecuting Attorneys Association, was recognized

to explain.

The purpose of this legislation is to extend the current time limitation for filing notice of intent to seek the death penalty in capital cases. The amendment to the bill extends the time to sixty days. In addition, the proposal would allow the state and defense to stipulate or agree to a different time limitation as deemed reasonable by the court.

The basis for this extension is to allow both the state and the defense additional time in order to conduct investigations into aggravating and mitigating circumstances. In answer to a question about whether other states have passed this type of legislation, Ms. Reilly said she didn't know.

MOTION: Representative LeFavour moved to send S 1422a to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative LeFavour will carry the bill on the floor.

S 1432: David Fulkerson, Division of Financial Management, was recognized.

This bill makes changes to 31-2219, Idaho Code, relating to compensation for services to the state by county sheriffs. This change would speed up the process so that claims could be paid within 60 days after approval of the claim by the Board of Examiners.

MOTION: Representative Boe moved to send S 1432 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Boe will carry the bill on the floor.

S 1441: Senator McKenzie was recognized to explain the bill.

Senator McKenzie said current statutes only protect the "ownership, possession, or transportation" of firearms from local regulation and current statutes are silent as to the authority of cities and counties to regulate discharge of firearms within their boundaries. Neighboring states, Oregon and Utah, have complete preemption.

This bill would clarify that the legislature wants uniform law on firearms throughout the state. The bill would protect "any element relating to firearms and components thereof" from local regulation.

The Senator said this firearm preemption bill provides for complete preemption of all regulation of firearms by a county, city, agency, board or any other political subdivision of this state with exceptions. This bill consolidates the law and ensures that there will not be a patchwork of regulations regarding firearms throughout the state.

On page 2 in line 5, section (5), of the bill, exceptions are noted as follows: this section shall not be construed to affect the authority of the department of fish and game to make rules or regulations concerning the management of any wildlife in the state, the authority of counties and cities to regulate sport shooting ranges, and the authority of institutions of higher education to regulate matters relating to firearms.

The bill clarifies that it would apply to all political subdivisions. It is the intent to wholly occupy the field of firearms regulation within this state. This is good policy and helps those who lawfully carry concealed weapons in the state subject to the limitations put on by the state. This bill has no effect on private property.

The bill does not change any federal controls. It just clarifies the laws at the state level. The word “occupy” as used in the bill on page 1, line 20, is taken from other state legislation. It was meant to clarify the language.

MOTION:

Representative Hart moved to send S 1441 to the floor with a Do Pass recommendation.

In answer to a question, Senator McKenzie said persons are still allowed to use firearms on their personal property, as long as a person or property is not hurt. The language of the bill is based on language used in 41 other states. The state wanted to make a clear policy and that is what this bill does.

PRO:

Sharon W. Kiefer, Director’s Office, Idaho Department of Fish and Game, testified in support of the bill. The Commission discussed the bill at their meeting via a conference call and voted to support this legislation.

PRO:

Nate Helm, Legislative Advisor, Wildlife of Idaho, was recognized. Mr. Helm testified in support of the bill.

CON:

Steve Rutherford, Attorney, Boise City, testified against the bill. Mr. Rutherford said there are two words in the legislation that the city would like deleted. Those are on page 1, line 24, the words “rule, regulation”. The language of the bill reaches out too far. The use of the words rule and regulation would render rules and regulations of the city regarding firearms null and void. This law would reach into the city employer/employee relationship. In answer to a question, Mr. Rutherford said a separate exemption inserted into the language would be acceptable.

PRO:

Daniel Page, citizen and student at the University of Idaho, testified that he supported the bill. He voiced concern about controlling guns brought on campus. Senator McKenzie said each of the higher education institutions has a policy in place regarding firearms.

PRO:

Al Baker said he supported the bill. However, it fails to address the issue of personal defense.

PRO:

Ryan Davidson spoke in support of the bill.

PRO:

Nathan Berry spoke in support of the bill. He pointed out that gun control laws do not control crime. However, this is good legislation.

Representative Luker expressed concern regarding unintended consequences and asked if an additional exception for the city could be added. The Senator replied that it is clear that the city can already regulate their employees. A further amendment would not be supported.

In response to a question regarding deleting the words rule and regulation, the Senator said that language has been in the code for over 20 years.

Representative Luker said the sponsor's remarks make the intent behind the bill clear. However, he would like to see something more responsive to the cities concerns. Representative Luker said he would support the bill.

**SUBSTITUTE
MOTION:**

Representative Bock moved to send S 1441 to General Orders, deleting on page 1, line 24, the words "rule, regulation,".

Representative Labrador spoke in support of the original motion saying no one has gotten in the way of the cities. Representative Hart spoke in support of the original motion.

**ROLL CALL
VOTE:**

Roll Call Vote was requested on the substitute motion to send the bill to General Orders with Committee amendments attached. Voting AYE: Representatives Boe, LeFavour, Bock and Ruchti. Voting NAY: Representatives Smith, Harwood, Nielsen, Shirley, McGeachin, Hart, Bolz, Labrador, Luker and Kren. Motion failed 4-10-2.

**ORIGINAL
MOTION:**

The original motion was to send S 1441 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representatives Boe and LeFavour asked to be recorded as voting "No" on the motion. Representative Hart will carry the bill on the floor.

ADJOURN:

Prior to adjourning, Chairman Smith said future meetings would be subject to the call of the Chair. There being no further business to come before the Committee, the meeting was adjourned at 5:40 p.m.

Representative Leon Smith
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 19, 2008

TIME: 4:10 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representatives Ruchti, Lefavour

GUESTS: See attached sign-in sheet

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Vice Chairman Smith moved to approve the minutes of the meeting held on March 13, 2008, as written. Motion carried by voice vote.

S 1438a: The Chairman recognized Michael Kane, Idaho Sheriffs Association, to explain the bill.

The purpose of the bill is to prohibit certain persons from possessing energy conducting weapons (often called tasers or stun guns.) In addition, it makes the use of such energy conducting devices in the commission of a felony, a separate felony.

Finally, it doubles the penalty for assault and battery, hazing and domestic violence when the person uses an energy conducted device in the commission of such offense.

Tasers, stingers and stun guns are available to the general public. This legislation puts Idaho on the cutting edge in terms of penalties for taser use. The bill is based on the concealed weapons laws that prohibit felons, fugitives, mentally unstable persons, drug users, minors and illegal aliens from possessing concealed weapons.

MOTION: Representative Nielsen moved to send S 1438a to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Wills will carry the bill on the floor.

ADJOURN: The Chairman said any future meetings will be subject to the call of the Chair. There being no further business to come before the Committee, the meeting was adjourned at 4:30 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary